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# PENSION BULLETIN

FEBRUARY, 2000 • VOLUME 9, ISSUE 1

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*The Financial Services Commission of Ontario Act, 1997, the Pension Benefits Act, R.S.O. 1990, c.P.8, Regulation 909 R.R.O. 1990 as amended, the terms of the pension plan and trust, if any, and the policies, procedures and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.*

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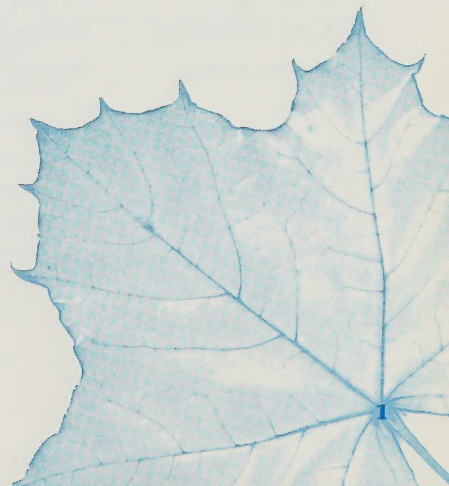
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## General Announcements

### Pension Plans Branch staff changes

Kathy Carmosino has joined the Pension Plans Branch as a pension officer. Kathy is responsible for pension plans that fall within the alpha range, The Droq-Unicorp, and can be reached at (416) 226-7823. Stanley Chan has changed portfolio, assuming the alpha range I-King. Pension Officers Simon Laxon and Deric Jacklin have left FSCO. Gino Marandola has temporarily assumed responsibility for Simon Laxon's files (alpha range Net-Pepsi) and Lynda Ellis has temporarily assumed responsibility for Maureen Barber's files (alpha range En-Gkn) and Deric Jacklin's files (alpha range Gko-Hz). Please see page four for contacts.



## Contacts for Plan Specific Enquiries

### Pension Plan Allocations

Name	Title	Telephone #	Allocation Alpha Range
Jaan Pringi	Senior Pension Officer	(416) 226-7826	See Note 1
Vacant – See Note 2	Pension Officer	See note 2	#’s-ASCU
Penny McIlraith	Pension Officer	(416) 226-7822	Associates-BTM
Sharon Polischuk	Pension Officer	(416) 226-7819	Bull-CDA
Irene Mook-Sang	Pension Officer	(416) 226-7824	Central-CUSO
Lynda Ellis	Senior Pension Officer	(416) 226-7809	See Note 1
Vacant – See Note 2	Pension Officer	See note 2	En-Gkn
Vacant – See Note 2	Pension Officer	See note 2	Gko-Hz
Stanley Chan	Pension Officer	(416) 226-7806	I-King
David Allan	Pension Officer	(416) 226-7803	Kinh-Mark
Gino Marandola	Senior Pension Officer	(416) 226-7820	See Note 1
Jeff Chuchman	Pension Officer	(416) 226-7807	D Graz-Em
John Graham	Pension Officer	(416) 226-7774	Marl-Nes
Vacant – See Note 2	Pension Officer	(416) 226-7781	Net-Pepsi
Larry Martello	Pension Officer	(416) 226-7821	Pepsij-Rob
Rosemin Jiwa-Jutha	Senior Pension Officer	(416) 226-7816	See Note 1
Todd Hellstrom	Pension Officer	(416) 226-7814	Roc-Sons
Gwen Gignac	Pension Officer	(416) 226-7812	Sont-The Drop
Kathy Carmosino	Pension Officer	(416) 226-7823	The Droq-Unicorp
Clifford Amilcar	Pension Officer	(416) 226-7804	Unicorq-Zz

Note 1:

Senior Pension Officers (SPO) will have a special allocation.

The administrators of the plans assigned to the SPOs will be notified shortly.

Note 2:

Please contact the SPOs for these allocations.



## **Advisory committees**

### FSCO Pension Investment Advisory Committee

Alfred G. Wirth, Chair  
Wirth Associates Inc.  
Robert Bertram,  
Ontario Teachers' Pension Board  
Jim Franks,  
Frank Russell Canada Ltd.  
Bruce J. Grantier,  
Scotia Bank  
Elaine Hamilton,  
United Church of Canada  
Claire O. Kyle,  
TD Asset Management Inc.  
Ann Marshall,  
James P. Marshall Inc.  
Thomas E. Phelps,  
Noranda Inc.  
Robert R. Rafos,  
Newcastle Capital Management Inc.

### FSCO Pension Actuarial Advisory Committee

Allan H. Shapira, Chair  
Hewitt Associates  
Peter Beca,  
Aon Consulting Inc.  
Art Bicknell,  
Sun Life Assurance Company of Canada  
Sylvie Charest,  
William M. Mercer Limited  
Karen Figueiredo,  
Towers Perrin  
Patrick F. Flanagan,  
Eckler Partners Limited

Karen G. Long,  
KPMG Actuarial, Benefits & Compensation Inc.  
Kem Majid,  
Watson Wyatt Canada  
Jean-Claude Primeau,  
William M. Mercer Limited  
Rob Rosenblat,  
Aon Consulting Inc.  
Alnasir H. Samji,  
Towers Perrin

### FSCO Pension Accounting and Assurance Advisory Committee

Don Wilkinson, Chair  
Deloitte & Touche  
R. Wayne Gladstone,  
O. M. E. R. S.  
Marie Holland,  
KPMG Pension Services  
Douglas Isaac,  
Coopers & Lybrand  
Neil Jacoby,  
Aurion Capital Management Ltd.  
Ron Koehli,  
Institute of Chartered Accountants of Ontario  
Bryan Kogut,  
BDO Dunwoody  
Massimo Marinelli,  
Ernst & Young  
Greg P. Shields,  
Canadian Institute of Chartered Accountants  
Kenneth J. Vallillee,  
Arthur Andersen

FSCO Pension Legal Advisory Committee

Peter K. Fritze, Chair

Torys

Leigh Ann Bastien,

William M. Mercer Limited

Dona Campbell,

Sack Goldblatt Mitchell

Jeremy Forgie,

Blake Cassels & Graydon

Murray Gold,

Koskie & Minsky

Bernard A. Hanson,

Cavalluzzo Hayes Shilton McIntyre & Cornish

Priscilla H. Healy,

Towers Perrin

Andrew Lokan,

Gowling, Strathy & Henderson

Rose Mark,

State Street Trust Company Canada

Gary F. Nachshen,

Stikeman, Elliott

Mary M. Picard,

Fraser Milner

Douglas Rienzo,

Osler, Hoskin & Harcourt







## LEGISLATIVE CHANGES/REGULATORY POLICIES

### **Amendments because of the Supreme Court of Canada Decision in *M. v. H.* Act, 1999**

Under the *Amendments because of the Supreme Court of Canada Decision in M. v. H. Act, 1999* (*Amendment Act*), the *Pension Benefits Act* (*PBA*) has been amended to explicitly acknowledge the rights and responsibilities of same-sex partners. The *Amendment Act* received Royal Assent on October 28, 1999; if not proclaimed earlier, provisions of the *PBA* amendments will take effect on March 1, 2000.

The *Amendment Act* introduces the concept of "same-sex partner" into the *PBA*. Same-sex partner means either of two persons of the same sex who are living together in a conjugal relationship, (a) continuously for a period of not less than three years, or (b) are in a relationship of some permanence, if they are the natural or adoptive parents of a child, both as defined in the *Family Law Act*.

When the *Amendment Act* takes effect, the words "same-sex partner" will be inserted into all sections of the *PBA* that address spousal rights and responsibilities. This includes not only the joint and survivor pension entitlement, but also disclosure rights, entitlement to pre-retirement death benefits, and entitlement to pension asset division on breakdown of the relationship.

*Amendment Act* changes to the *PBA* clarify the rights and responsibilities of plan sponsors in respect of plan members with same-sex partners. Plans that have not been amended to accommodate same-sex partners will be deemed to contain such provisions.

### **Pension Benefits Statute Law Amendment Act, 1999**

In the 1997 and 1998 Ontario Budgets and subsequent consultations, the government committed to changes to the *Pension Benefits Act* (*PBA*). On December 7, 1999, the government introduced the *Pension Benefits Statute Law Amendment Act, 1999* (*PBSLAA*), which amends the *PBA*. The *PBSLAA* received Royal Assent on December 22, 1999. However, the amendments to the *PBA* contained in the *PBSLAA* will not come into force until a day to be named by proclamation of the Lieutenant Governor.

The amendments fall into two general categories: streamlining and harmonization changes and unlocking changes.

The streamlining and harmonization changes include a new provision allowing the Minister to enter into agreements with other Canadian jurisdictions with respect to multi-jurisdictional pension plans. There is also a provision clarifying the duty of a pension fund trustee to report instances of non-remittance of contributions to the Superintendent of Financial Services based on summaries of contributions required to be made by the plan administrator.

The unlocking changes include an amendment deeming a pension plan to permit variation in the terms of payment of a pension or deferred pension in circumstances of shortened life expectancy. Another amendment would allow the owner of a prescribed retirement savings arrangement to apply to the Superintendent for consent to withdraw money from the arrangement in circumstances of financial hardship.

The details as to how the unlocking changes would be accomplished and the criteria that would be used will be set out in additional changes to Regulation 909.



*Commission of Ontario Act, 1997, S.O. 1997, c.28, (the Act)* to wind-up the Pension Plan effective July 17, 1992, and a copy of that **Notice of Proposal** was sent to the Administrator and the Employer by registered mail on or about June 10, 1999;

**AND WHEREAS** no notice requiring a hearing was delivered to the Financial Services Tribunal by the Administrator or the Employer within the time prescribed by subsection 89(6) of the *Act*.

**I ORDER** that the **Van Dresser Limited Employees Pension Plan, Registration No. 361592 (formerly C-12548)**, be wound up in whole **effective July 17, 1992**.

I make this Order pursuant to subsection 69(1) of the *Act*, for the following reason:

1. There was a cessation or suspension of employer contributions to the pension fund as of July 17, 1992.

**THE ADMINISTRATOR IS REQUIRED**, pursuant to subsection 69(2) of the *Act*, to **forthwith** transmit a copy of this Order to the following person:

KPMG Inc. (formerly Peat Marwick Thorne Inc.)  
Trustee in Bankruptcy and Receiver &  
Manager, Van Dresser Limited  
Suite 3300, Commerce Court West  
P.O. Box 31, Station Commerce Court  
Toronto, ON M5L 1B2

Attn: ~~Mr.~~ Michael Creber  
**Sr. Vice-President**

DATED at Toronto, Ontario this 9<sup>th</sup> day of August, 1999.

Dina Palozzi  
Superintendent of Financial Services





IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28, respecting the **Van Dresser Limited Non-Contributory Pension Plan, Registration No. 960005 (formerly C-100753);**

TO: Ernst & Young Inc.  
Ernst & Young Tower  
Toronto-Dominion Centre  
P.O. Box 251, 222 Bay Street  
Toronto, ON  
M5K 1J7

Attention: Brian Denega  
Senior Vice-President  
**Administrator of the Van  
Dresser Limited Non-  
Contributory Pension Plan,  
Registration No. 960005  
(formerly C-100753)**

AND TO: Van Dresser Limited  
139 Northfield Drive  
Waterloo, ON  
N2L 5A6

Attention: Mr. Jeff Bradshaw  
Controller  
**Employer**

### ORDER

**WHEREAS** the Superintendent of Pensions made an Order on September 16, 1993, that the **Van Dresser Limited Non-Contributory Pension Plan, Registration No. 960005 (formerly C-100753) (the Pension Plan) be wound up in whole effective the 5th day of May 1992**, for the reasons that the employer was bankrupt and there was a cessation or suspension of employer contributions to the pension fund on that date;

**AND WHEREAS** after September 16, 1993, the Administrator of the Pension Plan confirmed that employer contributions continued to be made to the Pension Plan after the bankruptcy of the employer and that those contributions did not cease until July 17, 1992;

**AND WHEREAS** one of the facts (ie. the date employer contributions ceased) relied upon by the Superintendent of Pensions in ordering the wind-up of the Pension Plan **EFFECTIVE May 5, 1992**, was in error and having reconsidered the matter, I proposed to order the wind-up of the Pension Plan based on the correct set of facts;

**AND WHEREAS** on June 7th, 1999, I signed a Notice of Proposal to make an Order pursuant to s.69 of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the *Act*), to wind-up the Pension Plan effective July 17, 1992, and a copy of that Notice of Proposal was sent to the Administrator and the Employer by registered mail on or about June 8, 1999;

**AND WHEREAS** no notice requiring a hearing was delivered to the Financial Services Tribunal by the Administrator or the Employer within the time prescribed by subsection 89(6) of the *Act*.



I ORDER that the **Van Dresser Limited Non-Contributory Pension Plan, Registration No. 960005 (formerly C-100753)**, be wound up in whole effective **July 17, 1992**.

I make this Order pursuant to subsection 69(1) of the *Act* for the following reason:

1. There was a cessation or suspension of employer contributions to the pension fund as of July 17, 1992.

**THE ADMINISTRATOR IS REQUIRED** pursuant to subsection 69(2) of the *Act*, to **forthwith** transmit a copy of this Order to the following persons:

KPMG Inc.

(formerly Peat Marwick Thorne Inc.)

Trustee In Bankruptcy and Receiver & Manager, Van Dresser Limited

Suite 3300, Commerce Court West

P.O. Box 31, Station Commerce Court

Toronto, ON M5L 1B2

Attn: Mr. Michael Creber,  
**Senior Vice-President**  
CAW-Canada  
205 Placer Court  
North York, ON M2H 3H9

Attn: Mr. Lewis Gottheil  
**Counsel**

**DATED** at Toronto, Ontario this 9th day of August, 1999.

Dina Palozzi

Superintendent of Financial Services





IN THE MATTER OF the *Pension Benefits Act*,  
R.S.O. 1990, c. P. 8 as amended by the *Financial  
Services Commission of Ontario Act, 1997*, S.O.  
1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal of the  
Superintendent of Financial Services to make an  
order pursuant to section 69 of the *Act*  
respecting the **Pension Plan for Unionized  
Employees of Northern Globe Building  
Materials, Inc. (Brantford Division),**  
**Registration No. 680413** (the *Plan*);

TO: Arthur Andersen Inc.  
Toronto Dominion Centre  
1900-79 Wellington Street West  
P.O. Box 29  
Toronto, ON  
M5K 1B9

Attention: David R. Kearney  
**Administrator**

AND TO: Northern Globe Building  
Materials, Inc.  
2230 Indianapolis Blvd.  
Whiting, Indiana  
U.S.A. 46394

Attention: John F. Dombrow  
Director, Human Resources  
**Employer**

### ORDER

On August 23, 1999, I caused to be served on  
the Administrator and the Employer by first  
class registered mail a Notice of Proposal dated  
August 19, 1999, to make an Order pursuant to  
subsection 69(1) of the *Act* to wind-up the Plan  
in whole.

No Notice requiring a hearing was delivered to  
the Financial Services Tribunal by the  
Administrator or the Employer within the time  
prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that the  
Plan be wound up in whole, effective November  
16, 1995, for the following reasons:

1. There has been a cessation or suspension of  
employer contributions to the pension fund.
2. The employer is bankrupt within the meaning  
of the *Bankruptcy and Insolvency Act (Canada)*.
3. A significant number of members of the plan  
ceased to be employed by the employer as a  
result of the discontinuance of all or part of  
the business of the employer or as a result of  
reorganization of the business of the employer.
4. All or a significant portion of the business  
carried on by the employers has been  
discontinued.

PURSUANT TO subsection 69(2) of the *Act*, the  
Administrator is required to give notice of this  
Order to the following persons by transmitting a  
copy hereof:

#### **Employer's Trustee In Bankruptcy**

A. Farber & Partners Inc.  
1200 Sheppard Avenue East, Suite 300  
Toronto, ON  
M2K 2R8

#### **Employees' Union**

United Steel Workers Of America Local 8813  
277 Mechanic Street  
Waterdown, ON  
N0E 1Y0

DATED at Toronto, Ontario this 12th day of  
October, 1999.

K. David Gordon  
Director  
Pension Plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act*,  
R.S.O. 1990, c. P. 8 as amended by the *Financial  
Services Commission of Ontario Act, 1997*, S.O.  
1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal of the  
Superintendent of Financial Services to make an  
order pursuant to section 69 of the *Act*  
respecting the **Pension Plan for Executive  
Employees of Vulcan Packaging Inc.**,  
Registration No. 977918 (the Plan);

TO: Deloitte & Touche Inc.  
BCE Place, Suite 1400  
181 Bay Street  
Toronto, ON  
M5J 2V1

Attention: Mr. Bruce S. Bando  
**Administrator**

AND TO: Vulcan Packaging Inc.  
15 Bethridge Road  
Rexdale, ON  
M9W 1M6

Attention: Mr. Alex Telfer  
President  
**Employer**

### ORDER

On August 23, 1999, I caused to be served on  
the Administrator and the Employer by first  
class registered mail a Notice of Proposal dated  
August 19, 1999, to make an Order pursuant to  
subsection 69(1) of the *Act* to wind-up the Plan  
in whole.

No Notice requiring a hearing was delivered to  
the Financial Services Tribunal by the  
Administrator or the Employer within the time  
prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that the  
Plan be wound up in whole, effective May 15,  
1997, for the following reasons:

1. There has been a cessation or suspension of  
employer contributions to the pension fund.
2. The employer has failed to make  
contributions to the pension fund as required  
by the *Act* and the regulations.
3. The employer is bankrupt within the meaning  
of the *Bankruptcy and Insolvency Act (Canada)*.
4. A significant number of members of the plan  
have ceased to be employed by the employer  
as a result of reorganization of the business of  
the employer.
5. All or a significant portion of the business  
carried on by the employer has been  
discontinued.

PURSUANT TO subsection 69(2) of the *Act*, the  
Administrator is required to give notice of this  
Order to the following persons by transmitting a  
copy hereof:

Ernst & Young Inc.  
Trustee in Bankruptcy  
175 Commerce Valley Drive West  
Suite 600  
Thornhill, ON  
L3T 7P6

Attention: Mr. Harold Reiter  
**Employer's Trustee  
in Bankruptcy**

DATED at Toronto, Ontario this 12th day of  
October, 1999.

K. David Gordon  
Director  
Pension Plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services





IN THE MATTER OF the *Pension Benefits Act*,  
R.S.O. 1990, c. P. 8 as amended by the *Financial  
Services Commission of Ontario Act, 1997*, S.O.  
1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal of the  
Superintendent of Financial Services to make an  
order pursuant to section 69 of the *Act*  
respecting the **Pension Plan for Employees of  
Vulcan Packaging Inc., Registration No.  
364323** (the *Plan*);

TO: Deloitte & Touche Inc.  
BCE Place, Suite 1400  
181 Bay Street  
Toronto, ON  
M5J 2V1

Attention: Mr. Bruce S. Bando  
**Administrator**

AND TO: Vulcan Packaging Inc.  
15 Bethridge Road  
Rexdale, ON  
M9W 1M6

Attention: Mr. Alex Telfer  
President  
**Employer**

### ORDER

On August 23, 1999, I caused to be served on  
the Administrator and the Employer by first  
class registered mail a Notice of Proposal dated  
August 19, 1999, to make an Order pursuant to  
subsection 69(1) of the *Act* to wind-up the Plan  
in whole.

No Notice requiring a hearing was delivered to  
the Financial Services Tribunal by the  
Administrator or the Employer within the time  
prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that the  
Plan be wound up in whole, effective May 15,  
1997, for the following reasons:

1. There has been a cessation or suspension of  
employer contributions to the pension fund.
2. The employer has failed to make contributions  
to the pension fund as required by the *Act*  
and the regulations.
3. The employer is bankrupt within the meaning  
of the *Bankruptcy and Insolvency Act (Canada)*.
4. A significant number of members of the plan  
have ceased to be employed by the employer  
as a result of the discontinuance of all or part  
of the business of the employer or as a result  
of reorganization of the business of the  
employer.
5. All or a significant portion of the business  
carried on by the employer has been  
discontinued.

PURSUANT TO subsection 69(2) of the *Act*, the  
Administrator is required to give notice of this  
Order to the following persons by transmitting a  
copy hereof:

Ernst & Young Inc.  
Trustee in Bankruptcy  
175 Commerce Valley Drive West  
Suite 600  
Thornhill, ON  
L3T 7P6

Attention: Mr. Harold Reiter  
**Employer's Trustee  
in Bankruptcy**

DATED at Toronto, Ontario this 12th day of  
October, 1999

K. David Gordon  
Director  
Pension Plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an order pursuant to section 69 of the *Act* respecting the **Staff Pension Plan for Hourly Paid Employees of Vulcan Packaging Inc.**, Registration No. 379214 (the Plan);

TO: Deloitte & Touche Inc.  
BCE Place, Suite 1400  
181 Bay Street  
Toronto, ON  
M5J 2V1

Attention: Mr. Bruce S. Bando  
**Administrator**

AND TO: Vulcan Packaging Inc.  
15 Bethridge Road  
Rexdale, ON  
M9W 1M6

Attention: Mr. Alex Telfer  
President  
**Employer**

### ORDER

On August 23, 1999, I caused to be served on the Administrator and the Employer by first class registered mail a Notice of Proposal dated August 19, 1999, to make an Order pursuant to subsection 69(1) of the *Act* to wind-up the Plan in whole.

No Notice requiring a hearing was delivered to the Financial Services Tribunal by the Administrator or the Employer within the time prescribed by subsection 89(6) of the *Act*.

**IT IS THEREFORE HEREBY ORDERED** that the Plan be wound up in whole, effective May 15, 1997, for the following reasons:

1. There has been a cessation or suspension of employer contributions to the pension fund.
2. The employer has failed to make contributions to the pension fund as required by the *Act* and the regulations.
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act (Canada)*.
4. A significant number of members of the plan have ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of reorganization of the business of the employer.
5. All or a significant portion of the business carried on by the employer has been discontinued.

**PURSUANT TO** subsection 69(2) of the *Act*, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Ernst & Young Inc.  
Trustee in Bankruptcy  
175 Commerce Valley Drive West  
Suite 600  
Thornhill, ON  
L3T 7P6

Attention: Mr. Harold Reiter  
**Employer's Trustee  
in Bankruptcy**

CAW Local 1008  
467 St. Clair Street  
Chatham, Ontario  
N7L 3K6

Attention: Mr. Joe McCabe  
**Employees' Union**



DATED at Toronto, Ontario this 12th day of  
October, 1999.

K. David Gordon

Director

Pension Plans Branch

by delegated authority from

Dina Palozzi

Superintendent of Financial Services





IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an order pursuant to section 69 of the *Act* respecting the **Pension Plan for Non-Negotiated Employees of Northern Globe Building Materials, Inc., Registration No. 680397** (the Plan);

TO: Arthur Andersen Inc.  
Toronto Dominion Centre  
1900-79 Wellington Street West  
P.O. Box 29  
Toronto, ON  
M5K 1B9

Attention: David R. Kearney  
**Administrator**

AND TO: Northern Globe Building  
Materials, Inc.  
2230 Indianapolis Blvd.  
Whiting, Indiana  
U.S.A. 46394

Attention: John F. Dombrow  
Director, Human Resources  
**Employer**

### ORDER

On August 23, 1999, I caused to be served on the Administrator and the Employer by first class registered mail a Notice of Proposal dated August 19, 1999, to make an Order pursuant to subsection 69(1) of the *Act* to wind-up the Plan in whole.

No Notice requiring a hearing was delivered to the Financial Services Tribunal by the Administrator or the Employer within the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that the Plan be wound up in whole, effective November 16, 1995, for the following reasons:

1. There has been a cessation or suspension of employer contributions to the pension fund.
2. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act (Canada)*.
3. A significant number of members of the plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of reorganization of the business of the employer.
4. All or a significant portion of the business carried on by the employers has been discontinued.

PURSUANT TO subsection 69(2) of the *Act*, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Employer's Trustee In Bankruptcy  
A. Farber & Partners Inc.  
1200 Sheppard Avenue East, Suite 300  
Toronto, Ontario  
M2K 2R8

DATED at Toronto, Ontario this 12th day of October, 1999.

K. David Gordon  
Director  
Pension Plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P. 8 as amended by the *Financial  
Services Commission of Ontario Act, 1997*, S.O.  
1997, c. 28 (the *Act*);

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to make an  
order pursuant to section 69 of the *Act*  
respecting the **Retirement Plan for the  
Employees of Rigid Box Company Limited,**  
**Registration No. 0579920** (the Plan);

**TO:** London Life Insurance Company  
255 Dufferin Avenue  
London, ON  
N6A 4K1

**Attention:** Ms. Diane Vanden Boomen  
Customer Conservation Services  
**Administrator**

**AND TO:** Rigid Box Company Limited  
27 Hobson Avenue  
Toronto, ON  
M4A 1Y3

**Attention:** Mr. Jack Hillis  
Chief Financial Manager  
**Employer**

### ORDER

On August 23, 1999, I caused to be served on  
the Administrator and the Employer by first  
class registered mail a Notice of Proposal dated  
August 19, 1999, to make an Order pursuant to  
subsection 69(1) of the *Act* to wind-up the Plan  
in whole.

No Notice requiring a hearing was delivered to  
the Financial Services Tribunal by the  
Administrator or the Employer within the time  
prescribed by subsection 89(6) of the *Act*.

**IT IS THEREFORE HEREBY ORDERED** that the  
Plan be wound up in whole, effective July 1,  
1996, for the following reason:

1. There has been a cessation or suspension of  
employer contributions to the pension fund.

**PURSUANT TO** subsection 69(2) of the *Act*, the  
Administrator is required to give notice of this  
Order to the following persons by transmitting a  
copy hereof:

Risman & Zysman Inc.  
Trustee in Bankruptcy  
4711 Yonge Street, Suite 702  
Toronto, ON  
M2N 6K8

**Employer's Trustee in Bankruptcy**

**DATED** at Toronto, Ontario this 12th day of  
October, 1999.

K. David Gordon  
Director  
Pension Plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28, respecting the **Pension Plan for the Employees of Aerodat Inc., Registration No. 1026970**, dated the 6th day of August, 1999;

TO: The Manufacturers Life Insurance Company  
500 King North  
P.O. Box 1602  
Waterloo, ON  
N2J 4C6

Attention: Yolanda Pingos  
Discontinuance Underwriter  
**Administrator of the Pension Plan for the Employees of Aerodat Inc.**

AND TO: Aerodat Inc.  
6300 Northwest Drive  
Mississauga, ON  
L4V 1J7

Attention: Linda Coish  
Plan Administrator  
**Employer**

#### **ORDER**

ON the 9th day of August, 1999, I issued a **Notice of Proposal to make an Order** dated the 6th day of August, 1999, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28

(the *Act*), to the Administrator and to the Employer to wind-up in whole the **Pension Plan for the Employees of Aerodat Inc., Registration No. 1026970**.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the Tribunal), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that the **Pension Plan for the Employees of Aerodat Inc., Registration No. 1026970** be wound up in whole, effective November 28, 1997, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of reorganization of the business of the employer.
3. All or a significant portion of the business carried on by the employer at a specific location was discontinued.

PURSUANT TO subsection 69(2) of the *Act*, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Arthur Andersen Inc.  
Toronto-Dominion Centre  
1900 -79 Wellington Street West  
P.O. Box 29  
Toronto, ON  
M5K 1B9

Attn: David Kearney  
Manager  
**Trustee in Bankruptcy**





**DATED** at Toronto, Ontario this 23rd day of  
November 1999.

K. David Gordon

Director, Pension Plans Branch

by delegated authority from

Dina Palozzi

Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28, respecting the **Revised Pension Plan for Employees of the Employer, Registration No. 0224923 (previously C-24)**, dated the 9th day of June, 1999;

TO: The Canada Life  
Assurance Company  
330 University Avenue  
Toronto, ON  
M5G 1R8

Attention: Milica Stojin  
Plan wind-up Specialist  
**Administrator of the Revised  
Pension Plan for Employees  
of the Employer**

AND TO: Brown & Collett Limited  
2365 Matheson Blvd.  
Mississauga, ON  
L4W 5C2

Attention: R.W. Bernard  
Controller  
**Employer**

### ORDER

ON the 10th day of June, 1999, I issued a **Notice of Proposal to Make an Order** dated the 9th day of June, 1999, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the, S.O. 1997, c.28 (the *Act*), to the Administrator and to the Employer to wind-up in whole the **Revised Pension Plan for Employees of the Employer, Registration No.**

**0224923 (previously C-24)** (the Plan) for those members and former members of the Plan who ceased to be employed by the Employer effective between March 24, 1995, and March 1, 1996.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the Tribunal), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

**IT IS THEREFORE HEREBY ORDERED** that the Plan be wound up in whole for those members and former members of the Plan who ceased to be employed by the Employer effective between March 24, 1995, and March 1, 1996, for the following reasons:

1. A significant number of members of the plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.

**PURSUANT TO** subsection 69(2) of the *Act*, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Price Waterhouse Limited  
5700 Yonge Street  
Suite 1900  
North York, ON  
M4M 4K7

Attention: Craig Munro  
**Receiver and Trustee  
in Bankruptcy**

**DATED** at Toronto, Ontario this 17th day of August 1999.

K. David Gordon  
Director  
Pension Plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28;

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28, respecting the **Pension Plan for Hourly Rated Employees of Eastern Steel Products/Frink Canada (Montreal)**, Registration No. 0381061 (previously C-13468), dated the 27th day of July, 1999;

**TO:** Price Waterhouse Limited  
Suite 1100  
One Robert Speck Parkway  
Mississauga, ON  
L4Z 3M3

**Attention:** Patti Hamilton  
Administrator  
**Administrator of the Pension Plan for Hourly Rated Employees of Eastern Steel Products/Frink Canada (Montreal)**

**AND TO:** Eastern Steel Products/Frink Canada (Montreal)  
365 Evans Avenue  
Suite 303  
Toronto, ON  
M8Z 1K2

**Attention:** George V. Jacquemain  
President  
**Employer**

#### ORDER

ON the 28th day of July, 1999, I issued a **Notice of Proposal to make an Order** dated the 27th day of July, 1999, pursuant to subsection 69(1)

of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the, S.O. 1997, c.28 (the *Act*), to the Administrator and to the Employer to wind-up in whole the **Pension Plan for Hourly Rated Employees of Eastern Steel Products/Frink Canada (Montreal)**, Registration No. 0381061 (previously C-13468).

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the Tribunal), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

**IT IS THEREFORE HEREBY ORDERED** that the **Pension Plan for Hourly Rated Employees of Eastern Steel Products/Frink Canada (Montreal)**, Registration No. 0381061 (previously C-13468) be wound up in whole, effective the 3rd day of July, 1992, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. A significant number of members of the plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
3. All or a significant portion of the business carried on by the employer at a specific location was discontinued.

**DATED** at Toronto, Ontario this 24th day of September 1999.

K. David Gordon  
Director, Pension Plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services





## Appointments of administrators - Section 71 of the PBA

The Superintendent of Financial Services appointed third-party administrators pursuant to subsection 71(1) of the PBA to wind-up the plan in whole or in part.

- 1) Buck Consultants appointed as administrator of FBI Brands Ltd. - Les marques FBI Ltée and designated Affiliated and Subsidiary Companies Pension Plan Pension Plan, Registration No. 951996, effective September 6, 1999
- 2) Arthur Andersen Inc. appointed as administrator of Gallaher Thorold Paper Co. Hourly Paid Pension Plan, Registration No. 1039981, effective September 27, 1999
- 3) Arthur Andersen Inc. appointed as administrator of Gallaher Thorold Paper Co. Salaried Pension Plan, Registration No. 1039999, September 27, 1999
- 4) PricewaterhouseCoopers appointed as administrator of Marshall Paper Ltd. Group Pension Plan, Registration No. 411850, effective July 21, 1999
- 5) Deloitte & Touche Inc. appointed as administrator of Royal Oak Mines Inc. Pension Plan for Timmins Hourly Employees, Registration No. 0937466, effective October 13, 1999
- 6) Deloitte & Touche Inc. appointed as administrator of Royal Oak Mines Inc. Pension Plan for Timmins Salaried Employees, Registration No. 0937458, effective Oct 13, 1999

## Superintendent acting as administrator - Section 71 of the PBA

- 1) The Superintendent of Financial Services acting as administrator for the Retirement Plan for the Employees of Maysfield Property Management (1987) Inc., Registration No. 433961, effective November 5, 1999.



## Consents to payment of surplus out of wound up pension plans - Subsection 78 (1) and 79 (3) of the PBA

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order pursuant to subsection 78(1) of the *Act* consenting to payment out of the **Pension Plan for Senior Executive Employees of Perry's (Colonnade) Limited, Registration No. 0409532;** (the Plan)

TO: Perry's (Colonnade) Limited  
131 Bloor Street West  
Toronto, ON  
M5S 1R3

Attention: Mr. Rae Dellio  
President  
**Applicant and Employer**

### CONSENT

On September 21, 1999, the Superintendent of Financial Services caused to be served on Perry's (Colonnade) Limited by first class registered mail a Notice of Proposal dated September 20, 1999, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the **Pension Plan for Senior Executive Employees of Perry's (Colonnade) Limited, Registration No. 0409532**, to Perry's (Colonnade) Limited of the surplus remaining in the Plan. The surplus in the Plan is subject to adjustment for investment earnings to the date of payment and subject to adjustment for any difference between the actual and expected actuarial and related expenses of this application. No Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant

and Employer within the time prescribed by subsection 89(6) of the *Act*.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the **Pension Plan for Senior Executive Employees of Perry's (Colonnade) Limited, Registration No. 0409532**, to Perry's (Colonnade) Limited of the surplus remaining in the Plan. The surplus in the Plan is subject to adjustment for investment earnings to the date of payment and subject to adjustment for any difference between the actual and expected actuarial and related expenses of this application.

**DATED** at Toronto, Ontario this 8th day of November, 1999.

K. David Gordon  
Director  
Pension Plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*);

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to make an Order pursuant to subsection 78(1) of the *Act* respecting the **Retirement Plan for the Employees of Bectar Corporation, Registration No. 0954271** (the Plan);

TO: Deloitte & Touche Inc.  
1000 Royal Bank Centre  
90 Sparks Street  
Ottawa, ON K1P 5T8

Attention: Mr. Bruce Beggs  
Senior Manager  
**Trustee in Bankruptcy  
of Bectar Corporation**

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Trustee in Bankruptcy of Bectar Corporation satisfies the Superintendent of Financial Services that all benefits, benefit enhancements (including benefit enhancements pursuant to the surplus sharing agreement) and any other payments to which the members, former members and any other persons are entitled have been paid, purchased, or otherwise provided for.

**DATED** at Toronto, Ontario this 5th day of November, 1999.

K. David Gordon  
Director  
Pension Plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services

### CONSENT

On September 22, 1999, the Superintendent of Financial Services caused to be served on the Trustee in Bankruptcy of Bectar Corporation by first class registered mail a Notice of Proposal dated September 20, 1999, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Plan of 50 per cent of the surplus remaining in the Plan, after deducting costs of wind-up, to Deloitte & Touche Inc. as Trustee in Bankruptcy of Bectar Corporation.

No Notice requiring a hearing was delivered to the Financial Services Tribunal by the Trustee in Bankruptcy of Bectar Corporation within the time prescribed by subsection 89(6) of the *Act*.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Plan of 50 per cent of the surplus remaining in the Plan, after deducting costs of wind-up, to Deloitte & Touche Inc. as Trustee in Bankruptcy of Bectar Corporation.





**Declarations that the Pension Benefits  
Guarantee Fund applies to pension plans -  
Subsection 83 (1) of the PBA**

**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended by the *Financial  
Services Commission of Ontario Act, 1997*, S.O.  
1997, c.28;

**AND IN THE MATTER OF** a Proposal by the  
Superintendent of Financial Services to make a  
Declaration under section 83 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P.8, as amended by  
the *Financial Services Commission of Ontario Act*,  
1997, S.O. 1997, c.28, respecting the **NCM  
Carpet Mills Hourly Employees' Pension Plan**,  
**Registration Number 956839**;

**TO:** Buck Consultants Limited  
P.O. Box 15, Suite 1500  
95 Wellington Street West  
Toronto, ON  
M5J 2N7

**Attention:** Wafaa Babcock,  
Consulting Actuary  
**Administrator of the NCM Carpet  
Mills Hourly Employees'  
Pension Plan**

**AND TO:** NCM Carpet Mills Inc.  
5195 Maingate Drive  
Mississauga, ON  
L4W 1G4

**Attention:** Columba McAlary  
**Employer**

**AND TO:** Richter & Partners Inc.  
90 Eglinton Avenue East,  
Suite 700  
Toronto, ON  
M4P 2Y3

**Attention:** Robert Kofman  
**Trustee in Bankruptcy for  
National Fibretech Inc.**

**DECLARATION**

**WHEREAS:**

1. The **NCM Carpet Mills Hourly Employees' Pension Plan**, **Registration Number 956839** (the Pension Plan) is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the Act); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the Guarantee Fund) by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective December 31, 1991; and
4. The Superintendent of Pensions appointed Buck Consultants as the administrator (the Administrator) of the Pension Plan on December 17, 1997;
5. On September 15, 1999, I issued a **Notice of Proposal to Make a Declaration that the Guarantee Fund** applies to the Pension Plan (the Notice of Proposal), dated September 10, 1999; and
6. No Notice requiring a hearing was delivered to the Financial Services Tribunal (the Tribunal) within the time prescribed by subsection 89(6) of the Act.

**NOW THEREFORE TAKE NOTICE** that I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

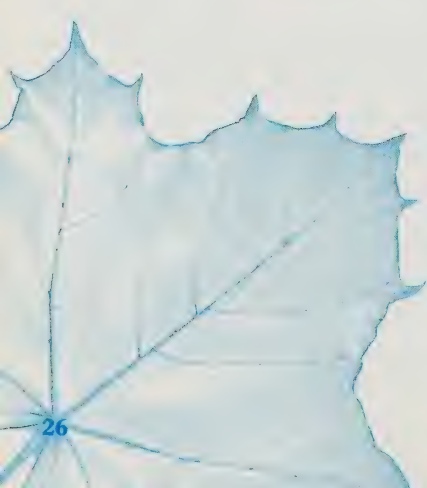
1. The Revised Supplementary Wind-Up Report filed by the Administrator indicates an estimates funding deficiency of \$259,930.00 as at July 31, 1998.



2. In October 1993, the name of employer, NCM Carpet Mills Inc., was changed to National Fibretech Inc.
3. In May 1997, National Fibretech Inc. was adjudged bankrupt.
4. The trustee in bankruptcy of National Fibretech Inc. has advised the Administrator that there are no assets available from the estate of National Fibretech Inc. for the Pension Plan.

**DATED** at Toronto, Ontario, the 16th day of November, 1999.

Dina Palozzi  
Superintendent of Financial Services





### **Benefits Guarantee Fund - Subsection 34 (7) of Regulation 909**

IN THE MATTER OF the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended by the *Financial  
Services Commission of Ontario Act, 1997, S.O.*  
1997, c. 28;

AND IN THE MATTER OF a Declaration by the  
Superintendent of Financial Services under  
section 83 of the *Pension Benefits Act*, R.S.O.  
1990, c. P.8, as amended by the *Financial Services  
Commission of Ontario Act, 1997, S.O.* 1997, c.28,  
respecting the **NCM Carpet Mills Hourly  
Employees' Pension Plan, Registration  
Number 956839;**

TO: Buck Consultants Limited  
P.O. Box 15, Suite 1500  
95 Wellington Street West  
Toronto, ON  
M5J 2N7

Attention: Wafaa Babcock,  
Consulting Actuary  
**Administrator of the NCM Carpet  
Mills Hourly Employees'  
Pension Plan**

### **ALLOCATION**

**WHEREAS** on November 16th 1999, I declared,  
pursuant to section 83 and 89 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P.8, as amended by  
the *Financial Services Commission of Ontario Act*,  
1997, S.O. 1997, c.28 (the *Act*), that the Pension  
Benefits Guarantee Fund (the Guarantee Fund)  
applies to the **NCM Carpet Mills Hourly  
Employees' Pension Plan, Registration  
Number 956839** (the Pension Plan);

**NOW THEREFORE** I shall allocate from the  
Guarantee Fund and pay to the Pension Plan,  
pursuant to subsection 34(7) of R.R.O. 1990, Reg.  
909, under the *Act* (the Regulation), an amount  
not to exceed \$259,930 to provide, together with

the Ontario assets, for the benefits determined in  
accordance with section 34 of the Regulation.  
Any money allocated from the Guarantee Fund  
but not required to provide such benefits shall  
be returned to the Guarantee Fund.

**DATED** at Toronto, Ontario, this 16th day of  
November, 1999.

Dina Palozzi  
Superintendent of Financial Services





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, C. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Declaration by the Superintendent of Financial Services under section 83 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28, respecting the **Pension Plan for Hourly - Rated Employees of Barrymore Carpet Division of Carpita Corporation, Registration Number C-14852;**

**TO:** KPMG Inc.  
(formerly Peat Marwick Thorne Inc.)  
Suite 3300, Commerce Court West  
P.O. Box 31, Stn Commerce Court  
Toronto, ON  
M5L 1B2

**Attention:** Michael Creber,  
Senior Vice President  
**Administrator, Pension Plan for Hourly - Rated Employees of Barrymore Carpet Division of Carpita Corporation, Registration Number C-14852**

**AND TO:** Ernst & Young Inc.  
P. O. Box 251, 22nd Floor  
Ernst & Young Tower  
Toronto Dominion Centre  
Toronto, ON  
M5K 1J7

**Trustee in Bankruptcy**

**AND TO:** Amalgamated Clothing & Textile Workers Union AFL - CIO,  
Local 1464 (formerly Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union,  
Local 351

34 Madison Avenue  
Toronto, ON  
M5R 3N6  
**Union**

**AND TO:** Barrymore Carpet Division of  
Carpita Corporation  
7075 Ordan Drive, Unit A  
Mississauga, ON  
L5T 1T1

**Attention:** Leslie MacTaggart  
Manager Human  
Resources/Payroll  
**Employer**

**ALLOCATION**

**WHEREAS** on May 28th, 1999 the Superintendent of Financial Services declared, pursuant to section 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the Act), that the Pension Benefits Guarantee Fund (the Guarantee Fund) applies to the **Pension Plan for Hourly-Rated Employees of Barrymore Carpet Division of Carpita Corporation Registration Number C-14852** (the Pension Plan);

**NOW THEREFORE** the Superintendent of Financial Services shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the Regulation), an amount not to exceed \$34,831.41 to provide, together with the Ontario assets, for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

**DATED** at Toronto, Ontario, this 28th day of May, 1999.

Dina Palozzi  
Superintendent of Financial Services



## TRIBUNAL ACTIVITIES

### Appointments of Tribunal members

Name and O.C.	Effective Appointment Date	Expiry Date
<b>Milczynski, Martha (Chair)</b>		
O.C. 1665/99	October 6, 1999	July 7, 2001
O.C. 1808/98	July 8, 1998	July 7, 2001
<b>McNairn, Colin (Vice-Chair)</b>		
O.C. 1809/98	July 8, 1998	July 7, 2001
<b>Bush, Kathryn M. (Vice-Chair)</b>		
O.C. 1666/99	October 6, 1999	June 16, 2000
O.C. 1191/99	June 17, 1999	June 16, 2000
O.C. 904/97	May 14, 1997	June 16, 1999
<b>Erlichman, Louis</b>		
O.C. 2527/98	December 9, 1998	December 8, 2001
O.C. 1592/98	June 17, 1998	December 16, 1998
<b>Forbes, William M.</b>		
O.C. 520/98	March 25, 1998	March 24, 2001
<b>Gavin, Heather</b>		
O.C. 11/99	January 13, 1999	January 12, 2002
<b>Greville, M. Elizabeth</b>		
O.C. 222/99	January 27, 1999	January 26, 2002
O.C. 2405/95	February 8, 1996	February 7, 1999
<b>Martin, Joseph P.</b>		
O.C. 1810/98	July 8, 1998	July 7, 2001
<b>Moore, C.S. (Kit)</b>		
O.C. 1591/98	July 1, 1998	June 30, 2001
<b>Robinson, Judy</b>		
O.C. 905/97	May 14, 1997	May 13, 2000
<b>Stephenson, Joyce Anne</b>		
O.C. 2409/98	November 4, 1998	November 3, 2001
O.C. 1930/95	October 28, 1995	October 27, 1998
<b>Wires, David E.</b>		
O.C. 2166/99	February 26, 2000	February 25, 2003
O.C. 257/97	February 27, 1997	February 26, 2000



## Hearings before the Pension Commission of Ontario

**Pension Plan for Unionized Employees of Asea Brown Boveri Inc. Located at London, Burlington and St. Jean, 683433,FST File X-0003**

In July 1996, the Superintendent issued a Notice of Proposal to Refuse to Approve a Wind-Up Report filed by Asea Brown Boveri Inc. (ABB) on the grounds that the wind-up report did not provide grow-in benefits in accordance with s. 74 of the *Pension Benefits Act*. ABB requested a hearing. Plan members belong to the CAW. The Union advised the Registrar that it wished to be a party to the hearing.

In May 1997, the Superintendent requested that the matter be adjourned pending the outcome of the *GenCorp* case. In July 1997, the matter was adjourned *sine die* for a period not exceeding one year.

On November 6, 1998, the Superintendent of Pensions issued an Amended Notice of Proposal to Refuse to Approve a Wind-Up Report. A pre-hearing conference was held on January 22, 1999.

At the pre-hearing conference it was agreed that the parties would try to resolve some of the issues. A telephone conference call was held on July 12, 1999. The Superintendent was asked to contact the administrator of the Westinghouse Canada Inc. Pension Plan, a predecessor plan for some affected ABB employees, to determine whether the partial wind-up reports will be filed with the Superintendent pursuant to four Orders issued on May 13, 1999.





## Pension Hearings before the Financial Services Tribunal

### **Pension Plan for Employees of Monsanto Canada Inc., Registration Number 341230, FST File P0013**

On November 30, 1998, the Superintendent of Financial Services issued a Notice of Proposal to Refuse to Approve a Partial Wind-Up Report filed by Monsanto respecting a 1997 plant closure. The grounds for the refusal were: (a) the wind-up report did not deal with the treatment of surplus on partial wind-up; (b) the payment of benefit enhancements on wind-up to certain members constituted an inequitable distribution of surplus, and an indirect payment of surplus to the employer without following the statutory requirements for the payment of surplus to the employer; and (c) the wind-up report provided that the funds relating to benefits of those in the partial wind-up group were to remain in the pension plan's fund rather than being distributed by way of a purchase of annuities.

On December 31, 1998, Monsanto Canada Inc. (Monsanto) requested a hearing before the Financial Services Tribunal. Monsanto has requested an order directing the Superintendent to approve the partial wind-up report pursuant to s.89(9) of the *Pension Benefits Act (PBA)*.

A pre-hearing conference was held on April 7, 1999. On June 2, 1999, a motion was heard in which Monsanto requested orders for disclosure of various documents and answers to various interrogatories from the Superintendent. The panel made the orders requested and gave the Superintendent 30 days to provide the material. Written reasons for the orders were released on June 21, 1999, and are published in Volume 8, Issue 2 of the Pension Bulletin.

A second pre-hearing conference in this proceeding was held on September 23, 1999. During the pre-hearing conference, party status was granted to the Association of Canadian

Pension Management (the ACPM) with the restriction that the ACPM will not call any witnesses at the hearing.

In a subsequent telephone conference on October 4, 1999, the Chair made an order that full party status be granted to "A group of Certain Terminated Monsanto Employees".

It was agreed that, on consent of all the parties, this hearing be adjourned on October 4, 1999, to January 10 through 14, 2000, and February 7 through 11, 2000. The Chair granted the adjournment.

### **National Hockey League Players' Pension Plan, Registration Number 353623, FST File P0045-1999**

On April 8, 1999, the Tribunal received a request for hearing from the National Hockey League (NHL) regarding the Superintendent's Notice of Proposal dated March 3, 1999, proposing to order the National Hockey League Pension Society to appoint an Administrator and a trustee for its Pension Plan that complied with the PBA within 60 days of the date of service of the Notice of Proposal.

The National Hockey League requested that no hearing dates be set. The NHL indicated that it was hopeful that compliance would be achieved through collective bargaining. The NHL and the players' association requested an extension of time to comply with the Notice of Proposal. The Superintendent granted this extension and the Tribunal agreed not to set any hearing dates for the time being.

On December 3, 1999, the Superintendent's Counsel confirmed that the Plan and the Trust Agreement now comply with the Notice of Proposal in this proceeding. On December 8, 1999, the Applicant withdrew its Request for a Hearing.



**Revised Retirement Plan for Employees of the Allen-Bradley Division of Rockwell International of Canada (now the Pension Plan for Employees of Rockwell Automation Canada Inc.), Registration Number 321554 and the Pension Plan for Salaried and Management Employees of Reliance Electric Limited, Registration Number 292946, FST File P0051-1999**

On March 30, 1999, pursuant to s.81 of the *Pension Benefits Act*, the Superintendent approved an application by Rockwell Automation Canada Inc. for the transfer of assets in the amount of \$28,720,000 from the Pension Plan for Reliance Electric Limited to the Pension Plan for Employees of Rockwell Automation, effective January 1, 1998. A member of the Reliance plan requested a hearing on May 18, 1999. Rockwell applied to be granted standing in the hearing.

At a pre-hearing conference on July 6, 1999, the matter was adjourned *sine die*.

**Ontario Institute for Studies in Education Employee Pension Plan, Registration Number 353854, FST File P0054-1999**

On June 1, 1999, the Governing Council of the University of Toronto requested a hearing regarding the Superintendent's Notice of Proposal dated April 30, 1999, to partially wind-up the Plan. A pre-hearing conference was held on September 17, 1999. The Professional Staff Association of the Ontario Institute for Studies in Education, the United Steelworkers of America and the Ontario Public Service Employees Union have filed Applications for Party Status and have been granted full party status.

The issues in this proceeding are: (a) Did the merger of the Ontario Institute for Studies in Education and the University of Toronto constitute a "reorganization" within the meaning

of subsection 69(1)(d) of the *Act*? (b) If the answer to issue (a) is yes, did a significant number of members of the Plan cease to be employed within the meaning of subsection 69(1)(d) of the *Act* as a result of the reorganization? (c) If the answer to issue (b) is yes, who are the members affected by the partial wind-up and what are the commencement and end dates for the partial wind-up? (d) Are there any discretionary reasons not to order a partial wind-up? (e) Is any party entitled to costs?

Hearing dates are scheduled May 1 through 4, May 10 and 11, 2000.

**Consumers Packaging Pension Plan II, Registration Number 998682, FST File P0055-1999**

Consumers Packaging Inc. filed a request for hearing on June 18, 1999, regarding the Superintendent's Notice of Proposal dated April 30, 1999, to order that the replacement call-in employees who fulfilled certain conditions be admitted as members into the Pension Plan.

The United Steelworkers of America has been granted standing in the hearing. A pre-hearing conference was held on August 19, 1999. A settlement conference was held on October 14, 1999, to resolve issues related to the disclosure of documents and information related to the employment of call-in employees requested by the Union. At a Settlement Conference on December 14, 1999, a settlement agreement was reached.

**The Retirement Plan for Salaried Employees (Consumer Foods) of General Mills Canada, Inc., Registration Number 342042, FST File P0058-1999**

In June 1999, General Mills Canada Inc. requested a hearing regarding the Superintendent's Notice of Proposal dated May





19, 1999, refusing to approve a partial wind-up report. The grounds for the refusal were: (a) the partial wind-up report did not deal with the treatment of surplus on partial wind-up; (b) the payment of benefit enhancements on wind-up to certain members constituted an inequitable distribution of surplus, and an indirect payment of surplus to the employer without following the statutory requirements for the payment of surplus to the employer; and (c) proper notice of the partial wind-up was not provided to the affected members, and the partial wind-up report does not allow the affected members who are entitled to an immediate pension and who receive a "special pension upgrade" to commute their pension benefits. On August 31, 1999, the tribunal agreed to adjourn the matter *sine die*.

**Labourers' Pension Fund of Central and Eastern Canada, Registration Number 573188, FST File P0059-1999**

On June 14, 1999, the Labourers' Pension Fund requested a hearing pursuant to section 89 of the *PBA* with respect to the Superintendent's Notice of Proposal dated May 18, 1999, proposing to order the Labourers' Pension Fund of Central and Eastern Canada to prepare and file two new actuarial valuation reports with valuation dates of December 31, 1996, and December 31, 1997, and to use certain assumptions and methods in the preparation of these reports. A pre-hearing conference, scheduled for October 14, 1999, was adjourned to allow the parties to narrow and perhaps resolve the issues, subject to the term that the parties are to advise the Registrar by February 29, 2000 whether a pre-hearing conference will be required.

**Ontario Teachers' Pension Plan, Registration Number 345785, FST File P0060-1999**

On June 16, 1999, the Ontario Teachers' Pension Plan Board filed a request for hearing regarding

the Superintendent's Notice of Proposal dated May 6, 1999, to order the Ontario Teachers' Pension Plan Board to comply with section 51 and subsections 48(13) of the *PBA* and pay to a deceased member's former spouse certain amounts or benefits under a domestic contract. A pre-hearing conference was held on July 21, 1999, and continued on August 31, 1999. The deceased member's former spouse was granted party status. Hearing dates are scheduled for March 27 and 28, 2000.

**Ontario Public Service Pension Plan, Registration Number 208777, FST File P0063-1999**

On July 5, 1999, a Pension Officer wrote a letter to a deferred vested member of the Ontario Public Service Pension Plan, David Horgan, advising that on the basis of the information provided, the Pension Officer thought that the Plan administrator had complied with its obligations under the *PBA* in denying an early retirement pension to the member as a result of the application of subsection 80(3) of the *PBA*. On August 10, 1999, Mr. Horgan requested a hearing before the Financial Services Tribunal with respect to this letter. On December 6, 1999, the Tribunal heard a motion on whether it has jurisdiction in this matter.

The Tribunal found that it does not have jurisdiction to proceed with the Request for a Hearing on the merits. The Superintendent's motion is allowed and the Request for Hearing is dismissed. Reasons for decisions will follow.

**Consumers Packaging Pension Plan II, Registration Number 998682, FST File P0068-1999**

Consumers Packaging Inc. filed a request for hearing on June 18, 1999, regarding the Superintendent's Notice of Proposal dated April 30, 1999, to refuse to





approve a partial wind-up report.

The reasons for the refusal are that the partial wind-up report does not provide grow-in to plant closure benefits for hourly union employees, and that it does not include the liabilities for certain replacement call-in employees who should be admitted into the plan. (See FST File P0055, above.) The United Steelworkers of America's Local 203G has been granted standing in the hearing. A pre-hearing conference was held on August 19, 1999. A settlement conference was held on January 24, 2000. Hearing dates are scheduled for March 7, 8 and 9, 2000.

**Consumers' Gas Ltd., Registration Number 242016, FST File P0076-1999**

On August 19, 1999, the Superintendent issued a Notice of Proposal proposing to refuse to approve the partial wind-up report filed by The Consumers' Gas Company Ltd. with respect to the sale of the Telesis Oil and Gas Division of Consumers' Gas. The grounds for refusal were: (a) the report did not provide for the distribution of the surplus attributable to the partial wind-up group; (b) the report did not provide grow-in to indexation benefits for members who had achieved 55 points under subsection 74(1) of the *PBA* (rather, it provided these benefits only to members who were 55 years old); and (c) the report did not include certain bonuses paid to Telesis employees in the calculation of earnings in determining the commuted value of these employees' pensions.

A pre-hearing conference was held on November 15 and December 2, 1999, and will reconvene on April 3, 2000.

**Schering-Plough HealthCare Products Canada Inc. Salaried Employees' Pension Plan, Registration Number 297903, FST File P0085-1999**

On October 14, 1999, the Superintendent issued a Notice of Proposal ordering Schering-Plough HealthCare Products Canada Inc. to amend the partial wind-up report with respect to its salaried pension plan as at August 31, 1996, so that the surplus attributable to the partial wind-up group is distributed.

A pre-hearing conference will be held on February 24, 2000.

**Ontario Teachers' Pension Plan, Registration Number 345785, FST File P0086-1999**

On October 27, 1999, the Superintendent made a decision that a former member of the Ontario Teachers' Pension Plan, Thomas Caster, was not entitled to a transfer of the commuted value of his pension under the terms of the Plan and subsection 42(3) of the *PBA*.

A pre-hearing conference was held on December 21, 1999.

A hearing was held on January 19, 2000 at which time the application was dismissed. Written reasons are to follow.



## Pension Commission of Ontario Decisions - Applications Since June 1999

*(Note: In this section, "Commission" refers to the Pension Commission of Ontario.)*

### **Surplus Withdrawal on Plan Wind-Up Pursuant to a Surplus Sharing Agreement - clause 8(1)(b) of Reg. 909, (as amended by O. Reg. 743/91) and s. 78(1) and 79(3) of the Act**

At the Commission meeting held June 24, 1999, pursuant to subsection 78(1) of the *PBA* and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

#### **(a) The Pension Plan for Salaried Employees of TecSyn International Inc., Registration Number C-9520**

Payment of surplus to TecSyn International Inc. (the Applicant) from The Pension Plan for Salaried Employees of TecSyn International Inc., Registration Number C-9520 (the Plan), in the amount of 20 per cent of (a) \$595,806 (the estimated amount of surplus in the Plan as at December 31, 1991), plus (b) investment earnings thereon to the date of payment, minus (c) administrative costs and fees not yet deducted as detailed on page two of the Application.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus-sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

In light of the extensive written submission received from three former members of the Plan (the Wieler Group) in opposition to the Application, the Commission wishes to include a summary of its reasoning in approving the Application. In the Commission's view, the Application meets the Commission's guidelines and policies governing the process for surplus-sharing agreements, in addition to complying with the relevant sections of the *Act* and Regulation. In particular, the Commission has the following comments:

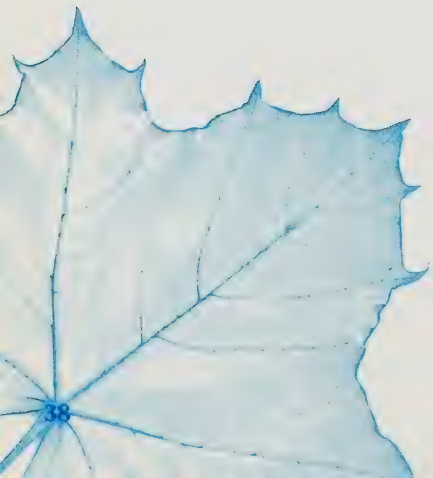
1. The Commission is satisfied that the Plan documents in effect on the wind-up date of December 31, 1991, provide for the Applicant to share in surplus distribution as of that date, after satisfaction of all liabilities under the Plan.
2. Notice to members and former members meets the Commission's requirements for content and distribution. The Commission noted that the 1966 Royal Trust Agreement was not included with the notice, as it was not available prior to the notice being distributed. In the Commission's view, this omission was not material to the determination of surplus entitlement under the Plan and did not prejudice the members and former members in the surplus-sharing group.
3. The percentage of members consenting are well in excess of the minimum requirements of the Regulation and Commission guidelines. Based on information provided by the Applicant effective June 16, 1999, 94.7 per cent of members, former members and members affected by the partial Plan wind-up on December 31, 1987, consented to the Application. These consents included 96 per cent of members and 70 per cent of



## **Pension Benefits Guarantee Fund (PBGF) - Notice of Proposed Declaration**

On June 24, 1999, the Commission, pursuant to subsection 90(1) of the *Pension Benefits Act (PBA)*, issued a Notice of Proposal to make a Declaration pursuant to subsection 83(1) of the *PBA* that the PBGF applies to the following pension plan:

- (a) **Peoples Jewellers Limited Executive  
Pension Plan, Registration Number 597666**



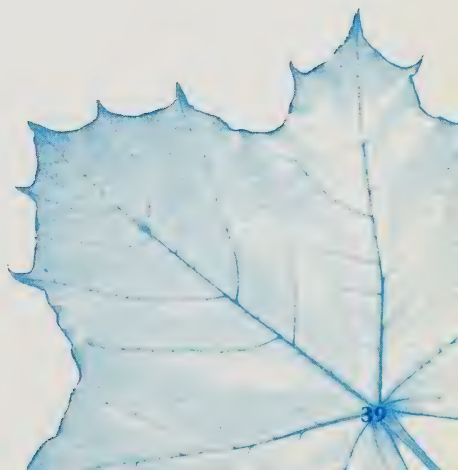




## **Pension Benefits Guarantee Fund (PBGF) - Declaration that the PBGF Applies to Pension Plans**

On August 19, 1999, the Commission, pursuant to section 83 of the *Pension Benefits Act (PBA)*, issued a Declaration that the PBGF applies to the following pension plan:

- (a) Peoples Jewellers Limited Executive  
Pension Plan, Registration Number 597666





former members excluding partial wind-up members. The Commission does not agree with the Wieler Group's submission that percentage of liabilities would be an acceptable or more appropriate measure of consent levels under clause 8(1)(b) of the Regulation.

4. In the Commission's view, the interests of members and former members were supported through the Members' Committee (as defined in the Application), whose legal counsel reviewed Plan documents and provided initial advice regarding surplus distribution methods. In the covering letter to the notice sent to each member and former member, the Applicant also suggested the use of "professional financial and legal advisors, if you have questions of a financial or legal nature".
5. In light of the factors noted above, the Commission has applied its past practice of applying a lower degree of scrutiny to prior Plan documentation in the presence of high levels of informed consent.
6. The Commission agrees with the Applicant's inclusion of partial Plan wind-up members in the surplus-sharing group, particularly in light of the Commission's practice of preserving potential surplus rights of persons affected by the partial wind-up of an ongoing plan that has a surplus. Where an employer has included such persons in any surplus distribution on the subsequent full wind-up of the Plan, and has exercised its discretion to do so in a reasonable manner, the Commission ought not to interfere. In this case the Applicant has provided ample justification to include those persons in the surplus-sharing group.
7. The Commission acknowledges the different

views expressed by the parties regarding the surplus allocation method set out in the surplus-sharing agreement, under which surplus would be shared in proportion to years of service. The Commission notes that this method, which was selected with the knowledge of the Members' Committee, is among those considered generally accepted under Commission Policy S900-900, and recognizes that the choice of method can significantly affect the amount of surplus shared by a particular member or group of members. The Commission finds no reason to deny the use of the method selected by the Applicant under this Application.

#### **Applications Approved under subsections 63(7) and (8) of the PBA - Refund of Member Contributions**

At the Commission meeting held June 24, 1999, the Commission consented pursuant to subsections 63(7) & (8) of the *PBA* to the refund of member required contributions as follows:

- (a) **Pension Plan "B" for Designated Employees of Industrial Tires Limited ID 4862-4, Registration Number 999128**  
Refund of member contributions from the Pension Plan "B" for Designated Employees of Industrial Tires Limited ID 4862-4, Registration Number 999128, in the aggregate amount of \$49,445.11 as at December 31, 1995, plus credited interest to the date of payment.  
This consent shall not be effective until the applicant provides the Commission with a certificate from the Actuary stating that the ratio of market value of assets of the Plan to solvency liabilities of the Plan is not reduced as a result of the refund of member contributions covered by this consent.



**(b) Pension Plan "C" for Designated Employees of Industrial Tires Limited ID4862-4, Registration Number 999110**

Refund of member contributions from the Pension Plan "C" for Designated Employees of Industrial Tires Limited ID4862-4, Registration Number 999110, in the aggregate amount of \$31,211.15 as at December 31, 1995, and \$30,366.19 as at December 31, 1994, plus credited interest to the date of payment.

This consent shall not be effective until the applicant provides the Commission with a certificate from the Actuary stating that the ratio of market value of assets of the Plan to solvency liabilities of the Plan is not reduced as a result of the refund of member contributions covered by this consent.

**Surplus Withdrawal on Plan Wind-Up Pursuant to a Surplus-Sharing Agreement - clause 8(1)(b) of Reg. 909, (as amended by O. Reg. 743/91) and s. 78(1) and 79(3) of the Act**

At the Commission meeting held September 23, 1999, pursuant to subsection 78(1) of the *PBA* and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

**(a) Lord & Burnham Inc. Employees' Pension Plan, Registration Number 274035**

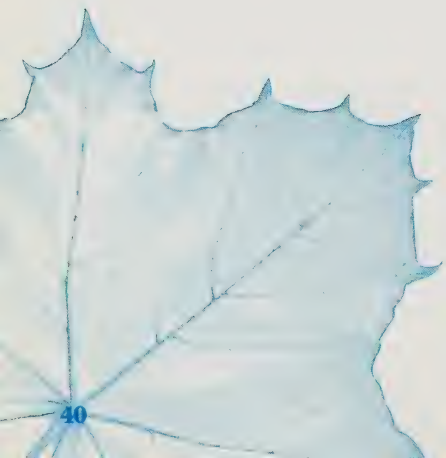
Payment of surplus to the Royal Bank of Canada (the Applicant) from the Lord & Burnham Inc. Employees' Pension Plan, Registration Number 274035 (the Plan), in the amount of 50 per cent of the surplus in the Plan. Surplus in the Plan was estimated to be \$493,173 as at March 1, 1991, the wind-up date of the Plan.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus-sharing agreement, and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

**(b) Plan of Retirement Benefits for Certain of the Employees Instituted by The Bowmanville Foundry Co. Limited, Registration Number 412171**

Payment of surplus to the Bowmanville Foundry Co. Limited from the Plan of Retirement Benefits for Certain of the Employees Instituted by the Bowmanville Foundry Co. Limited, Registration Number 412171, in the amount of 100 per cent of the surplus in the Plan (estimated to be \$60,546.68 as at June 2, 1997), plus investment earnings thereon to the date of payment.







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The Financial Services Commission of Ontario Act, 1997, the Pension Benefits Act, R.S.O. 1990, c.P.8, Regulation 909 R.R.O. 1990 as amended, the terms of the pension plan and trust, if any, and the policies, procedures and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.

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## General Announcements

### *The Pension Benefits Statute Law Amendment Act, 1999* and Consequential Regulatory Amendments

Bill 27, the *Pension Benefits Statute Law Amendment Act, 1999*, was introduced in the Legislature on December 7, 1999, and received Royal Assent on December 22, 1999. On March 3, 2000, the harmonization and streamlining amendments contained in Bill 27 and related Ontario Regulation 144/00 came into effect.

One important harmonization change is Ontario's adoption, by reference, of the federal investment rules as they read on December 31, 1999. All but two jurisdictions in Canada now have substantially the same investment rules for registered pension plans.

Another harmonization amendment enables Ontario to enter into a multilateral agreement with other jurisdictions regarding multi-jurisdictional pension plans. Benefit settlement deadlines on plan wind-up have also been amended to conform with a harmonization initiative of the Canadian Association of Pension Supervisory Authorities (CAPSA). Under this CAPSA proposal, a pension plan administrator would have 60 days to explain benefit entitlements and options to a terminating member, the member would have 90 days to make any elections, and the administrator would then have 60 days to settle the member's entitlement in accordance with the member's election.

A number of streamlining amendments are also contained in the package:

- cost certificates are no longer required for defined contribution plans;
- voluntary past service buy-backs are now specifically exempted from the minimum 50% employer cost rule; and
- spousal or same-sex partner waivers for pre-retirement death benefits no longer have to be signed by the plan member.

Other amendments include:

- a new LIF Schedule;
- the introduction of an Ontario LRIF, which provides for more flexible withdrawal options and the carry-forward of unused withdrawal room; and
- new reporting requirements for plan administrators and pension fund trustees intended to prevent unremitted pension contributions.

Ontario Regulation 242/00 became effective on May 1, 2000, and financial hardship unlocking is now available to qualified owners of Ontario locked-in accounts. Applications to unlock money held in a locked-in retirement account (LIRA), a life income fund (LIF) or a locked-in retirement income fund (LRIF) may be made in situations where:

- the applicant meets specified low income criteria;
- the applicant faces the risk of eviction from their principal residence;
- the applicant faces the risk of eviction from their rented residence;
- the applicant requires funds to pay first and last months' rent to rent a residence;
- the applicant needs money to pay for





medical treatment for himself or herself, his or her spouse or same sex partner or dependents of either;

- the applicant requires funds to modify his or her principal residence, or the residence of a dependent, to accommodate the use of a wheelchair or other needs related to a disability or illness.

Applications to unlock funds in cases of financial hardship must be made to the Superintendent of Financial Services.

There are also three other types of unlocking applications that may be made directly to the financial institution that administers the locked-in account. These have been available since March 3, 2000, and include:

- unlocking in cases where locked-in amounts are less than a specified amount and the applicant is at least 55;
- unlocking in cases where the applicant's life expectancy is less than two years; and
- unlocking amounts that exceed the maximum transfer amounts permitted under the *Income Tax Act* (Canada).

Copies of Bill 27, Ontario Regulation 144/00 and Ontario Regulation 242/00 are available on FSCO's website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca) (click on "Pensions" and "Access to Locked-in Accounts").

Prescribed forms are also available on the website.

FSCO staff are committed to working with pension stakeholders to ensure the amendments are implemented successfully. Questions about particular plans should be addressed to the appropriate pension officer; general questions may be addressed to the Pension Policy Unit.



## Recent Amendments to Ontario's Pension Investment Regulations and Changes to FSCO Procedures

### Changes to Investment Regulations

Ontario Regulation 144/00, which came into effect on March 3, 2000, may have significant implications for pension plans registered in Ontario.

Effective January 1, 2001, pension plans registered in Ontario must comply with the federal investment regulations (sections 6, 7, 7.1, and 7.2 and Schedule III of the Pension Benefits Standards Regulations, 1985), as they read on December 31, 1999. This will require the completion and adoption of a Statement of Policies and Procedures (SIP&P) to replace the current Statement of Investment Policies and Goals (SIP&G), as well as compliance with the other federal investment regulations.

During the period March 3, 2000, to December 31, 2000, pension plans may establish their SIP&P, the content of which must be in accordance with federal investment regulations. Other federal investment regulations relating to SIP&Ps, such as to whom they are to be submitted, would immediately apply.

Alternatively, pension plans may continue to comply with the Ontario investment regulations (sections 66 to 75 and 77 to 82 of Regulation 909 prior to the introduction of Ontario Regulation 144/00) with respect to the content and other requirements of a SIP&G. Regardless of whether a SIP&P is established or a SIP&G remains in effect during this period, the pension plan may either invest in accordance with the federal investment regulations or may continue to invest in accordance with the Ontario investment regulations.

Please note that the care, diligence and skill (i.e. prudence) requirements of section 22 of the *Pension Benefits Act* have not been amended. Also note that section 76 of Regulation 909 regarding financial statement requirements has also not changed.

Plan administrators should be aware that a SIP&P and a SIP&G are not identical. For guidance in the preparation of a SIP&P, plan administrators may wish to refer to the document entitled "Guideline for the Development of Investment Policies and Procedures for Federally Regulated Pension Plans" prepared by the Office of the Superintendent of Financial Institutions which is available on their website at [www.osfi-bsif.gc.ca](http://www.osfi-bsif.gc.ca)

Please note that the SIP&P is not required to be filed with FSCO. Although a review of the SIP&P is still required at least once a year, amendments to the SIP&P are also not required to be filed. The SIP&P and amendments must, however, be submitted to the pension plan's advisory committee, if one exists, and to the plan's actuary, if the plan is a defined benefit plan. The administrator must also make the SIP&P available for inspection by the persons listed in section 29 of the *Pension Benefits Act*.

These and other investment regulation changes are significant. It is therefore recommended that pension plan administrators:

- review the implications of the federal investment regulations for their plan,
- prepare and establish the plan's SIP&P as required, and
- plan for the transition to and the implementation of the federal investment regulations.



## Changes to FSCO Procedures

With the adoption of the federal investment regulations, two changes are being made to FSCO's procedures:

- effective immediately, the Investment Policy Return, which was required to be completed with the filing of all new SIP&Gs, will no longer be required, and
- the Pooled Fund Central Registry will be terminated effective January 1, 2001. Plans should not make reference to the Pooled Fund Central Registry in their SIP&P.



## Introduction of Risk-Based Approach to Supervising the Funding of Pension Plans

The Financial Services Commission of Ontario (FSCO) is introducing a risk-based approach to supervise the funding of pension plans. This new system was developed in consultation with an Advisory Panel drawn from the pension sector. The risk-based approach will enable FSCO to more efficiently utilize its resources, focus its attention on pension plans that require closer supervision, and take corrective action in a timely manner.

This approach is another step towards improving FSCO's operational effectiveness and service, one of its five strategic priorities for fiscal year 2000–2001. This improvement in FSCO's pension regulatory processes will protect pension plan members and their beneficiaries more effectively, and improve the viability of pension plans.

Pension stakeholders were first informed of the risk-assessment project in April 1999, when FSCO released a consultation paper which proposed a system that would use a set of risk-assessment criteria to identify pension plans requiring closer supervision, and described a project protocol for testing those criteria.

Testing of the risk assessment criteria began in June 1999 and was completed in April 2000. Evaluation by FSCO's staff of the risk assessment criteria was presented in May 2000, in a paper titled *Risk-based Supervision of the Funding of Ongoing Defined Benefit Pension Plans*.

To support the new risk-based approach, new regulatory tools are being utilized. For example, since July 1, 2000, a new Actuarial Information Summary (AIS) form developed in conjunction with the Canada Customs and Revenue Agency (CCRA) and the Office of the Superintendent of Financial Institutions (OSFI), has been required for reporting the financial condition of defined benefit pension plans. The AIS form facilitates the capture of essential information from actuarial valuation reports.

For more information about the risk-based approach, please contact George Ma, Chief Actuary, Pension Plans Branch, at (416) 226-7785, or toll-free at 1 800 668-0128, extension 7785, or by E-mail [gma@fSCO.gov.on.ca](mailto:gma@fSCO.gov.on.ca)



### **Pension Plans Branch – staff changes**

Calvin Andrews, Gulnar Chandani, Tim Thomson and Kent Wootton have joined the Pension Plans Branch as Pension Officers. Their telephone numbers are set out in the Allocation Listing which forms part of this bulletin. Hae-Jin Kim has joined the Branch as an Assistant Pension Officer and Chantal Laurin is the Designated Bilingual Assistant Pension Officer.

David Allan has changed portfolios, assuming the alpha range Net-Pep. Lynda Ellis has temporarily assumed responsibility for alpha range En-Gkn and alpha range Kinh-Mark. Pension Officers Sharon Polischuk and Gwen Gignac have left FSCO. Please see reverse side of this page for plan contacts.



## Contacts for Plan Specific Enquiries

### Pension Plan Allocations

Name	Title	Telephone #	Allocation Alpha Range
Jaan Pringi	Senior Pension Officer	226-7826	
Gulnar Chandani	Pension Officer	226-7770	#'s-Asc
Penny McIlraith	Pension Officer	226-7822	Asd-Bt
Tim Thomson	Pension Officer	226-7829	Bu-Cd
Irene Mook-Sang	Pension Officer	226-7824	Ce-Cz
Lynda Ellis	Senior Pension Officer	226-7809	
Vacant	Pension Officer	See Note 1	En-Gkn
Calvin Andrews	Pension Officer	226-7768	Gko-H
Stanley Chan	Pension Officer	226-7806	I-King
Vacant	Pension Officer	See Note 1	Kinh-Mark
Gino Marandola	Senior Pension Officer	226-7820	
Jeff Chuchman	Pension Officer	226-7807	D-Em
John Graham	Pension Officer	226-7774	Marl-Nes
David Allan	Pension Officer	226-7803	Net-Pep
Larry Martello	Pension Officer	226-7821	Peq-Rob
Rosemin Jiwa-Jutha	Senior Pension Officer	226-7816	
Todd Hellstrom	Pension Officer	226-7814	Roc-Sons
Kent Wootton	Pension Officer	226-7812	Sont-The Drop
Kathy Carmosino	Pension Officer	226-7823	The Droq-Unicorp
Clifford Amilcar	Pension Officer	226-7804	Unicorq-Z

Note 1:

Please contact the Senior Pension Officer of this team for information on plans that fall under this Allocation.





**Advisory committees –**  
as at September 1, 2000

FSCO Pension Investment Advisory Committee

Alfred G. Wirth, Chair  
Wirth Associates Inc.

Robert Bertram,  
Ontario Teachers' Pension Board

Jim Franks,  
Frank Russell Canada Ltd.

Bruce J. Grantier,  
Scotia Bank

Elaine Hamilton,  
United Church of Canada

Claire O. Kyle,  
TD Asset Management Inc.

Josephine Marks,  
Sun Life of Canada

Ann Marshall,  
James P. Marshall Inc.

Barry McInerney,  
William M. Mercer Limited

Eileen Mercier,  
Workplace Safety and Insurance Board

Thomas E. Phelps,  
Noranda Inc.

Robert R. Rafos,  
Newcastle Capital Management Inc.

FSCO Pension Actuarial Advisory Committee

Allan H. Shapira, Chair  
Hewitt Associates

Art Bicknell,  
Sun Life Assurance Company of Canada

Paul Chang,  
Morneau Sobeco Inc.

Karen Figueiredo,  
Towers Perrin

Patrick F. Flanagan,  
Eckler Partners Limited

Laurie Hutchinson,  
Hospitals of Ontario Pension Plan

Kem Majid,  
Watson Wyatt Canada

Clare Pitcher,  
Buck Consultants

Markus Robertson,  
Robertson, Eadie, Olsen & Associates

Rob Rosenblat,  
Aon Consulting Inc.

David Short,  
Eckler Partners Limited



FSCO Pension Accounting and Assurance  
Advisory Committee

(Chair vacant)

Jason Besler,  
Arthur Andersen

Charlie Eigl,  
OPSEU Pension Trust

Marie Holland,  
KPMG LLP

Ron Koehli,  
Institute of Chartered Accountants of Ontario

Massimo Marinelli,  
Ernst & Young

Eric Turner,  
The Canadian Institute of  
Chartered Accountants

Albert Walker,  
Global Benefit Plan Consultants

FSCO Pension Legal Advisory Committee

Murray Gold, Chair  
Koskie & Minsky

Leigh Ann Bastien,  
William M. Mercer Limited

Dona Campbell,  
Sack Goldblatt Mitchell

Jeremy Forgie,  
Blake Cassels & Graydon

Bernard A. Hanson,  
Cavalluzzo Hayes Shilton McIntyre & Cornish

Priscilla H. Healy,  
Towers Perrin

Andrew Lokan,  
Gowling, Strathy & Henderson

Rose Mark,  
State Street Trust Company Canada

Gary F. Nachshen,  
Stikeman, Elliott

Mary M. Picard,  
Fraser Milner

Douglas Rienzo,  
Osler, Hoskin & Harcourt



## Hearings/Court Matters

### Hearing before Pension Commission of Ontario under *Pension Benefits Act*

*Boeing, Toronto Ltd. (formerly McDonnell Douglas Canada Ltd.)*

On March 14, 2000, the Divisional Court dismissed an appeal by Boeing with respect to the decisions of the Pension Commission of Ontario dated May 29, 1998 and June 19, 1999. The first decision found that the Pension Commission had jurisdiction to conduct a section 89 hearing under the *Pension Benefits Act* (PBA) in circumstances where the Superintendent refused to order a plan partially wound up. The second decision found that a partial wind-up should be ordered based on either a reorganization of the employer's business or a discontinuance of all or part of the employer's business at a specific location. The court affirmed both decisions. The court also dismissed Gary Maynard's cross-appeal, and agreed with the Commission that the Commission had no jurisdiction to award costs. Gary Maynard was awarded \$7,500 for his costs of the appeal.





## Regulatory Policies

SECTION:	Refund of Employer Overpayment
INDEX NO.:	R350-102
TITLE:	Application for Refund of Employer Overpayment – PBA ss. 78(1) and (4), as amended
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO Pension Bulletin 9/2 and FSCO website
EFFECTIVE DATE:	January 1, 2001
REPLACES:	R350-101

This policy replaces R350-101 (“Refund of Employer Overpayment, Application under subsection 78(4), PBA, 1990”) as of the effective date of this policy.

*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28, as amended (“FSCO Act”), Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (“PBA”) or Regulation 909, R.R.O. 1990, as amended (“Regulation”), the FSCO Act, PBA or Regulation govern.*

### General Principles

1. Subsection 78(4) of the PBA provides that:

*Subject to section 89 (hearing and appeal), the Superintendent may consent to payment out of a pension fund to an employer of an amount not in excess of the amount of an overpayment by the employer into the pension fund or of an amount paid by the employer that should have been paid out of the pension fund, but shall not consent unless the application is made in the same fiscal year of the pension fund as the fiscal year in which the overpayment or the payment occurred.*

2. There are certain situations in which an employer may be considered to have over-contributed to a pension fund for the purposes of subsection 78(4) of the PBA, including but not limited to situations where:

- (a) the employer has contributed on the basis of an actuarial report for which the effective date had passed but when the new report was filed, such contributions exceeded those required by the new report;
- (b) payments have been made directly by the employer and they should have been made from the pension fund; or
- (c) employer contributions were paid into the pension fund of the wrong pension plan as a result of an administrative error.

In such circumstances, the employer may be considered to have over-contributed notwithstanding that there may be a solvency deficiency or going concern unfunded actuarial liability in the pension plan.

3. This policy does not apply to refunds



arising from provisions of the *Income Tax Act* (Canada) respecting the refund of contributions to the employer to avoid revocation of registration by the Canada Customs and Revenue Agency (formerly Revenue Canada). Refunds for this purpose must comply with the requirements of subsections 47(15) and (16) of the Regulation, as applicable. Applicants should refer to policy A400-500 ("Reduction of Accrued Benefits and/or Refunds or Payments to Avoid Revocation by Revenue Canada of Registration of a Pension Plan – Exemptions under PBA, R.S.O. 1990, ss. 18(1), s. 26 and s. 47 of O. Reg. 909").

### The Application for Refund of Employer Overpayment

4. The format and content of the application should be consistent with Schedule I to this policy.
5. The onus is on the applicant to satisfy the Superintendent that the application complies with the PBA and Regulation. The applicant should also demonstrate compliance with the applicable policies published by FSCO.

### Filing the Application

6. (a) The general procedure is outlined in policy S850-200 ("Filing Applications with the Superintendent of Financial Services").  
(b) The application, including attachments, should be submitted on 8-1/2" x 11" paper (subject to legibility).
7. The application is filed with the Superintendent by sending **three (3)** copies to:

Superintendent of Financial Services  
Financial Services Commission of Ontario  
5160 Yonge Street, 17th Floor  
Box 85  
North York, ON M2N 6L9

8. **Three (3)** copies of any information or materials which are supplemental to the initial filing and which are required in order to complete the application should be filed with the Superintendent.
9. Upon receipt, the application will be acknowledged.

### Extension of Procedural Time Limit on Reasonable Grounds

10. Where the Superintendent is satisfied that there are reasonable grounds for an extension of the time limit under subsection 78(4) of the PBA, an extension may be permitted in accordance with section 105 of the PBA.

### Decision or Proposed Decision of the Superintendent

11. The Superintendent will make a decision about the application after the Superintendent receives either:
  - (a) a complete application; or
  - (b) a written request from the applicant asking that the application proceed as is, where the applicant has been advised by FSCO staff that the application is incomplete.
12. Following a review of the application, the Superintendent will make a decision and will issue either a notice of proposal consenting to the application or a notice of proposal refusing consent.
13. The Superintendent will serve the notice of proposal on the applicant as required by subsection 89(3.2) of the PBA. The subsection provides that the Superintendent may require the applicant to transmit a copy of the notice of proposal to such other persons or classes of persons or both as the Superintendent specifies in the notice to the applicant.



14. Where the Superintendent requires that the applicant transmit a copy of the notice of proposal to other persons or classes of persons, the applicant must advise the Superintendent as to the last date on which the applicant transmitted the Superintendent's notice.
15. A notice of proposal issued under subsection 89(3.2) of the PBA shall state that the person on whom the notice is served is entitled to a hearing by the Financial Services Tribunal ("Tribunal") if the person delivers to the Tribunal, within thirty (30) days after service of the notice of proposal, a written notice requiring a hearing.
16. If no notice requiring a hearing is received within the specified time period, the Superintendent may carry out the proposed decision.
17. Applicants should refer to policy S850-100 ("Delegation of the Superintendent's Authorities") and policy S850-200 ("Filing Applications with the Superintendent of Financial Services") for additional information on the decision-making process.





## Schedule I

### Format and Content of the Application to the Superintendent for Consent to a Refund of Employer Overpayment

- Date:** *Enter the date of the application.*
- Employer:** *Provide the full legal name of the employer making the application.*
- Pension Plan:** *Provide the full legal name of the pension plan and the registration number.*
- Applicant:** *Provide the name, title and business address of the person making the application. This could be the employer or an agent or representative of the employer authorized to make the application on the employer's behalf. (Unless otherwise indicated in the application, all communication from the Superintendent and staff of FSCO will be directed to the agent or representative of the employer who makes the application on the employer's behalf.)*

### Nature of the Application:

*Provide a full description of what is being asked of the Superintendent with reference to specific section(s) of the PBA and Regulation pursuant to which the application is being made. For example:*

*Application for the Superintendent's consent pursuant to subsection 78(4) of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended, to a payment of \$ (insert the amount as at the effective date of the refund) representing an overpayment by the employer into the pension fund (or "an amount paid by the employer that should have been paid out of the pension fund") as at (insert the*

*effective date(s) of the overpayment(s)), plus investment earnings thereon to the date of payment.*

### Background:

*Provide a summary of how the overpayment occurred and any other information which will assist in understanding the application.*

### Subsection 78(4) of the PBA – Conditions:

*In the following subsections, the applicant must satisfy the Superintendent that the conditions of subsection 78(4) of the PBA have been satisfied.*

#### (a) Amount and Proof of Payment:

*Indicate what documentary evidence of the overpayment, including amount(s) and date(s), has been provided in support of the application. This evidence could be in the form of:*

- *excerpts from the actuarial report(s) which support the applicant's position that an overpayment has been made (if applicable);*
- *a letter or statement from the fund custodian indicating the employer payments were actually remitted to the fund;*
- *evidence that the employer has made payments from its general revenues which should have been paid from the pension fund; or*
- *evidence that the employer contributions were remitted to the wrong pension plan as a result of an administrative error.*

**(b) Timing of the Application:**

*Indicate how the requirement that the application be made in the same fiscal year as the overpayment occurred has been satisfied, or why an extension of the time limit under subsection 78 (4) of the PBA should be permitted pursuant to section 105 of the PBA.*

**Plan Provisions:**

*Provide confirmation that the plan permits, or does not prohibit, refunds of employer overpayments.*

**Certification by the Plan Administrator:**

*The application must include as an attachment a completed certification in the form set out in Schedule II to this policy signed by the plan administrator or an agent or representative of the administrator. Indicate where in the application the certification may be found.*

**Signature by the Applicant:**

*The application must be signed by the applicant identified at the beginning of the application. Before the signature, the applicant must state that the application contains all the documents and information material to an application made in accordance with subsection 78(4) of the PBA, and that the information contained in the application is true and accurate.*

**Attachments:**

*Provide an index of all attachments to the application. The attachments should be listed in an order that corresponds to the order of the subject matter under this document and, where applicable, in chronological order. Where an application is bound, the relevant tab numbers and their contents should also be included in the index.*



## Schedule II

### Administrator's Certification Respecting the Employer's Application under Subsection 78(4) of the *Pension Benefits Act*

Re: PENSION PLAN: \_\_\_\_\_  
(insert full plan name and registration number)  
(the "Pension Plan")

EMPLOYER: \_\_\_\_\_  
(insert full legal name of employer)  
(the "Employer")

I AM: (please mark the appropriate box with an "X")

- ☐ the administrator of the Pension Plan (the "Administrator"), or
- ☐ an agent or representative of the Administrator authorized by the Administrator to provide this certification.

AS PART OF the Employer's application for the Superintendent's consent pursuant to subsection 78(4) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA") for a payment of \$ (insert the amount as at the effective date of the refund, as set out in the Employer's application) out of the pension fund of the Pension Plan, I CERTIFY THAT this payment represents: (please mark the appropriate box below with an "X")

- ☐ an overpayment by the Employer into the pension fund of the Pension Plan in accordance with subsection 78(4) of the PBA, or
- ☐ an amount paid by the Employer which should have been paid out of the pension fund of the Pension Plan in accordance with subsection 78(4) of the PBA.

as at (insert the effective date(s) of the overpayment(s), as set out in the Employer's application) plus investment earnings thereon to the date of payment.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(day) (month) (year)

\_\_\_\_\_  
Signature of Administrator or Administrator's Agent or Representative

\_\_\_\_\_  
Name of Administrator or Administrator's Agent or Representative (printed)

\_\_\_\_\_  
Address of Administrator or Administrator's Agent or Representative (printed)

It is an offence under the Criminal Code, R.S.C. 1985, c. C-46, as amended, for anyone to knowingly make a false document with the intent that it be acted on as genuine.





SECTION:	Refund of Contributions to Plan Members
INDEX NO.:	R400-101
TITLE:	Application for Refund of Contributions to Plan Members or Former Members – PBA ss. 63(7) and (8), as amended
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO Pension Bulletin 9/2 and FSCO website
EFFECTIVE DATE:	January 1, 2001
REPLACES:	R400-100, R400-107, R400-200

This policy replaces R400-100 ("Applications to the Commission for Consent to a Refund, PBA, 1987 ss. 64(7) and (8)"), R400-107 ("Locking-In Provisions – Prior Consent of the Commission Required for Refunds, PBA 1990 ss. 63(7) and (8)) and R400-200 ("Applications to the Commission – Funding Deficiency – PBA, 1987 ss. 64(7)") as of the effective date of this policy.

*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.*

### General Principles

1. As a general rule, subsection 63(1) of the PBA provides that members and former members are not entitled to a refund of contributions from the pension fund. Subsections 63(2) to (8) of the PBA set out a number of exceptions to this general rule.
2. In particular, subsections 63(7) and (8) of the PBA provide:

63. - (7) *Despite subsection (1), on application by the administrator of a pension plan, contributions may be refunded to a member or a former member with the consent of the Superintendent.*
  - (8) *On application by the administrator of a pension plan, the Superintendent may consent to a refund under subsection (7) if the pension plan provides or has been amended to provide for the refund and the employer has assumed responsibility for funding all pension benefits associated with the contributions.*
3. In addition to satisfying the requirements of subsection 63(8) of the PBA, the Superintendent requires:
    - (a) either:
      - (i) an actuarial opinion which states that the ratio of the market value of the assets of the plan to the solvency liabilities of the plan is 1.0 or more prior to the refund being made, and,



where applicable, identifies any additional contributions required to maintain a ratio of 1.0 following the refund; or

- (ii) an actuarial opinion which states that the ratio of the market value of the assets of the plan to the solvency liabilities of the plan is less than 1.0 prior to the refund being made, and identifies any additional contributions required to maintain that ratio following the refund; and
  - (b) the refund will result in the equitable treatment of all active members, all deferred members or all retired members.
4. Where the actuarial opinion identifies any additional contributions which are necessary to satisfy the requirements in paragraphs 3(a)(i) or (ii) above, and the application satisfies all other applicable requirements of the PBA, Regulation and relevant policies, the Superintendent may consent to the application subject to the condition that the plan administrator confirm in writing that the additional contributions identified in the actuarial opinion have been made to the pension fund.
  5. If the plan has been amended to deem required contributions to be additional voluntary contributions, the requirements of subsection 63(8) of the PBA and the administrative requirements set out above will apply.
  6. In all cases, and notwithstanding that the foregoing requirements are met, the Superintendent has discretion under subsection 63(8) of the PBA to grant or refuse consent.
  7. If the applicant amended the plan to provide for the refund, the applicant should ensure the applicable requirements of the PBA,

Regulation and relevant policies concerning plan amendments have been satisfied.

8. This policy does not apply to refunds arising from provisions of the *Income Tax Act* (Canada) respecting the refund of contributions to plan members or former members to avoid revocation of registration by the Canada Customs and Revenue Agency (formerly Revenue Canada). Refunds for this purpose must comply with the requirements of subsections 47(13) and 47(14) of the Regulation as applicable. Applicants should refer to policy A400-500 ("Reduction of Accrued Benefits and/or Refunds or Payments to Avoid Revocation by Revenue Canada of Registration of a Pension Plan – Exemptions under PBA, R.S.O. 1990, ss. 18(1), s. 26 and s. 47 of O. Reg. 909").

### **The Application for Refund of Contributions to Plan Members or Former Members**

9. The format and content of the application should be consistent with Schedule I to this policy.
10. The onus is on the applicant to satisfy the Superintendent that the application complies with the PBA and Regulation. The applicant should also demonstrate compliance with the applicable policies published by FSCO and the former Pension Commission of Ontario.

### **Filing the Application**

11. (a) The general procedure is outlined in policy S850-200 ("Filing Applications with the Superintendent of Financial Services").
- (b) The application, including attachments, should be submitted on 8-1/2" x 11" paper (subject to legibility).



12. The application is filed with the Superintendent by sending **three (3)** copies to:  
Superintendent of Financial Services  
Financial Services Commission of Ontario  
5160 Yonge Street, 17th Floor  
Box 85  
North York, ON M2N 6L9
  13. **Three (3)** copies of any information or materials which are supplemental to the initial filing and which are required in order to complete the application should be filed with the Superintendent.
  14. Upon receipt, the application will be acknowledged.
- Decision or Proposed Decision of the Superintendent**
15. The Superintendent will make a decision about the application after the Superintendent receives either:
    - (a) a complete application; or
    - (b) a written request from the applicant asking that the application proceed as is, where the applicant has been advised by FSCO staff that the application is incomplete.
  16. Following a review of the application, the Superintendent will make a decision and will issue either:
    - (a) an unconditional consent;
    - (b) a notice of proposal to attach terms and conditions to a consent; or
    - (c) a notice of proposal to refuse to consent.
  17. If the Superintendent consents unconditionally to the refund, the Superintendent's consent along with written reasons will be communicated to the applicant.
  18. If the Superintendent proposes to consent to the refund with attached terms and conditions or to refuse to consent, the Superintendent will serve a notice of proposal on the applicant as required by subsection 89(4) of the PBA.
  19. A notice of proposal issued under subsection 89(4) of the PBA shall state that the person on whom the notice is served is entitled to a hearing by the Financial Services Tribunal ("Tribunal") if the person delivers to the Tribunal, within thirty days (30) days after service of the notice of proposal, a written notice requiring a hearing.
  20. If no notice requiring a hearing is received within the specified time period, the Superintendent may carry out the proposed decision.
  21. Applicants should refer to policy S850-100 ("Delegation of the Superintendent's Authorities") and policy S850-200 ("Filing Applications with the Superintendent of Financial Services") for additional information on the decision-making process.





## Schedule I

### Format and Content of the Application to the Superintendent for Consent to a Refund of Contributions to Plan Members or Former Members

<b>DATE:</b>	<i>Enter the date of the application.</i>
<b>PLAN ADMINISTRATOR:</b>	<i>Provide the correct full legal name of the plan administrator making the application.</i>
<b>PENSION PLAN:</b>	<i>Provide the full legal name of the pension plan and the registration number.</i>
<b>APPLICANT:</b>	<i>Provide the name, title and business address of the corporate officer authorized to act on the administrator's behalf. (Unless otherwise indicated in the application, all communication from the Superintendent and staff of FSCO will be directed to the agent who files the application on the applicant's behalf.)</i>

#### Nature of the Application:

*Provide a full description of what is being asked of the Superintendent with reference to specific section(s) of the PBA and Regulation pursuant to which the application is being made.*

*For example:*

*Application for the Superintendent's consent pursuant to subsection 63(7) of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended, to a refund of contributions plus interest to (identify the members or former members to whom the contributions are being refunded) in the aggregate amount of \$ (enter the total amount of contributions plus interest at the effective date of the refund), as at (enter effective date of the refund) plus interest thereon to the date of payment.*

#### Actuary/Counsel/Agent:

Provide the name of any person acting as actuary, counsel or agent for the plan administrator making the application, or acting on behalf of the members, former members or other persons. If there are no such persons, please indicate "None".

Actuary/Counsel/Agent for the Applicant (and name of firm):

Actuary/Counsel/Agent for the members/former members/union/etc. (and name of firm):

#### Collective Bargaining Agent:

*Provide the name of the Collective Bargaining Agent(s) who represent any members or former members of the pension plan.*

#### Background:

*Provide a brief summary of the background of the plan leading up to the application including:*

- *the effective date of the plan;*
- *description of the members and/or former members (e.g., all actives, all deferreds or all retirees) category to receive the refund;*
- *the basic benefit structure; and*
- *any other information which will assist in understanding the application.*

**Subsection 63(8) of the PBA – Conditions:**

*In the following subsections, the applicant must satisfy the Superintendent that the conditions of subsection 63(8) of the PBA have been met.*

**(a) Plan Provisions:**

*Indicate the provisions of the plan or plan amendment that provide for the refund of contributions to plan members or former members. Attach a copy of the relevant plan provisions or plan amendment.*

**(b) Employer Funding Responsibility:**

*Indicate the provisions of the plan or plan amendment that provide that the employer has assumed responsibility for funding all pension benefits associated with the contributions being refunded. Attach a copy of the relevant plan provisions or plan amendment.*

**Funded Status:**

*Either include:*

- (i) an actuarial opinion which states that the ratio of the market value of the assets of the plan to the solvency liabilities of the plan is 1.0 or more prior to the refund being made, and, where applicable, identifies any additional contributions required to maintain a ratio of 1.0 following the refund; or*
- (ii) an actuarial opinion which states that the ratio of the market value of the assets of the plan to the solvency liabilities of the plan is less than 1.0 prior to the refund being made, and identifies any additional contributions required to maintain that ratio following the refund.*

**Members or Former Members to Receive Refund:**

*The applicant must explain how the refund will result in the equitable treatment of all active members, all deferred members or all retired members.*

**Other Jurisdictions:**

*The applicant must disclose whether or not the plan has members or former members with benefits resulting from employment in a jurisdiction other than Ontario. Where the application affects members or former members with benefits resulting from employment in a jurisdiction other than Ontario, the applicant must include a table indicating the number of members or former members in each jurisdiction, including Ontario, affected by the application. The applicant must also provide certification in the form set out in Schedule II that the applicant has complied with the requirements of those jurisdictions for refunds of contributions to members or former members with respect to the affected members or former members.*

**Certification:**

*The application must include as an attachment a completed certification in the form set out in Schedule II to this policy signed by the administrator making the application, or an agent or representative of the administrator authorized to act on the administrator's behalf.*

*Indicate where in the application the certification may be found.*

**Other Submissions:**

*The application should include copies of any written representations relating to the application received by the applicant directly or through the Superintendent, as well as any responses by the applicant.*

The application should also include any other submissions which may be relevant.

**Attachments:**

*Provide a list of all attachments to the application. The attachments should be listed in an order that corresponds to the order of the subject matter under this document and, where applicable, in chronological order. Where an application is bound, the relevant tab numbers and their contents should be listed.*



## Schedule II

### Administrator's Certification of Application in Accordance with Subsection 63(7) of the Pension Benefit Act

Re: PENSION PLAN: \_\_\_\_\_  
(insert full plan name and plan registration number)  
(the "Pension Plan")

I AM: *(please mark the appropriate box with an "X")*

- ☐ the Administrator as set out in this application (the "Administrator"); or
- ☐ an agent or representative of the Administrator authorized by the Administrator to make this application and provide this certification;

#### I CERTIFY TO THE SUPERINTENDENT OF FINANCIAL SERVICES THAT:

- (a) *(identify the members or former members to whom the contributions are being refunded)* made contributions into the pension fund of the Pension Plan, plus interest, totalling \$ *(enter the total amount of contributions to be refunded plus interest to the effective date of the refund)* as at *(enter the effective date of the refund)*, plus interest thereon to the date of payment;
- (b) the Pension Plan provides for the refund referred to in (a);
- (c) the Employer, *(name of employer)*, as defined in the Pension Plan, has assumed responsibility for funding all pension benefits associated with the contributions;
- (d) the application contains all of the documents and information material to an application made in accordance with ss. 63(7) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended;
- (e) the information contained in the application and the attached documents is true and accurate, and the application is complete;
- (f) the pension legislation of the following Canadian jurisdictions other than Ontario applies to one or more members, former members or other beneficiaries of the Pension Plan affected by the application: \_\_\_\_\_;

*(insert names of all relevant Canadian jurisdictions; if none, leave blank)*

and





- (g) where the pension legislation of one or more Canadian jurisdictions other than Ontario applies to one or more members, former members or other beneficiaries of the Pension Plan affected by the application:
- (i) I am aware of, or have consulted with professionals who have advised me of, the requirements of the pension legislation of those other jurisdictions;
  - (ii) I have reviewed this application; and
  - (iii) to the best of my knowledge and belief, based on the information and advice provided to me, including that referred to herein, this application complies with the requirements for refunds of contributions to members or former members in the pension legislation of those other jurisdictions.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(day) (month) (year)

\_\_\_\_\_  
*Signature of Administrator or Administrator's Agent or Representative*

\_\_\_\_\_  
*Name of Administrator or Administrator's Agent or Representative (printed)*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
*Address of Administrator or Administrator's Agent or Representative (printed)*

*It is an offence under the Criminal Code, R.S.C. 1985, c. C-46, as amended, for anyone to knowingly make a false document with the intent that it be acted on as genuine.*



SECTION:	Refund of Contributions to Plan Members
INDEX NO.:	R400-108
TITLE:	Refund of Additional Voluntary Contributions to Active Members – PBA, 1990 ss. 63(2)
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO Pension Bulletin 9/2 and on FSCO website
EFFECTIVE DATE:	January 1, 2001
REPLACES:	R400-106

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**May active members of a pension plan receive a refund of additional voluntary contributions?**

Yes, provided that the terms of the pension plan give active members the right to a refund of additional voluntary contributions with interest, those assets may be paid out of the plan fund in accordance with subsection 63(2) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended. There is no requirement to obtain the Superintendent's consent to a refund of additional voluntary contributions.

However, if a contributory pension plan is amended to retroactively provide benefits on a non-contributory basis, required member contributions made to the effective date of the amendment are usually "deemed" to be additional voluntary contributions. Under these circumstances, "deemed" additional voluntary contributions may not be refunded to plan members without the consent of the Superintendent.



SECTION:	Surplus
INDEX NO.:	S900-509
TITLE:	Application by an Employer for Payment of Surplus from a Wound-up Plan – PBA ss. 78 and 79, as amended – Regulation 909 s. 8, as amended
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO Pension Bulletin 9/2 and on FSCO website
EFFECTIVE DATE:	January 1, 2001
REPLACES:	S900-508, S900-507

Subsection 78(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 (“PBA”), as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (“FSCO Act”), provides that surplus may not be paid to an employer unless the Superintendent of Financial Services (“Superintendent”) consents to the payment. The Superintendent shall not consent to an application to distribute surplus to an employer (“surplus application”) until specific requirements and conditions have been satisfied. Statements and documents supporting the applicant’s assertion that the requirements and conditions have been satisfied should be included in the surplus application to the Superintendent.

This policy replaces S900-508 (“Application by an Employer for Payment of Surplus from a Wound-Up Plan”, PBA ss. 78 and 79 and O. Rég. 909 s. 8”) in respect of surplus applications filed with the Superintendent on or after January 1, 2001. This policy also replaces S900-507 (“Surplus Applications Affecting Members, Former Members, or Other Persons with

Employment in a Jurisdiction Other Than Ontario”), the provisions of which have been revised and incorporated herein.

*Note: While this policy has been prepared as a guideline, it does not alter any requirements of the FSCO Act, PBA or Regulation 909, R.R.O. 1990 (“Regulation”). Where this policy conflicts with the FSCO Act, PBA or Regulation, the FSCO Act, PBA or Regulation govern. While compliance with this policy is intended to facilitate the application process, the Superintendent has the ultimate authority to decide whether to consent to or reject your application, and the Superintendent is not bound by this policy.*

**PART I** of this policy provides the procedure for bringing a surplus application to the Superintendent on a full wind-up pursuant to section 78 of the PBA and section 8 of the Regulation.

**PART II** of this policy provides the modifications to Part I which apply to a surplus application made to the Superintendent on a partial wind-up pursuant to section 78 of the PBA and section 8 of the Regulation.



## General

The onus is on the applicant to satisfy the Superintendent that the surplus application meets the requirements of the PBA and the Regulation. The applicant should also demonstrate compliance with all relevant policies, procedures and administrative practices.

Policy S850-200 ("Filing Applications with the Superintendent of Financial Services") outlines the general procedure for filing those applications, including surplus applications made to the Pension Commission in the first instance before the full proclamation of the *FSCO Act*.

It is the applicant's responsibility to decide whether plan specific circumstances warrant the inclusion of additional information or documentation to support the surplus application. For example, additional information about members or former members or additional plan documentation may be relevant in the following circumstances:

- the source of all or a portion of the assets of the pension fund can be traced to the pension fund of another pension plan;
- all or a portion of the liabilities of a pension plan were converted to liabilities determined on another basis (a plan conversion);
- there was a partial wind-up at any time prior to the date of wind-up; or
- all or a portion of the liabilities of a pension plan relate to members, former members or other persons with employment in a jurisdiction other than Ontario.

If information necessary for the Superintendent to approve a surplus application is missing, the Superintendent will not be able to consent.

The content of this policy is set out as follows:

### PART I DISTRIBUTION OF SURPLUS TO AN EMPLOYER ON FULL WIND-UP

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### PART II DISTRIBUTION OF SURPLUS TO AN EMPLOYER ON PARTIAL WIND-UP

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## PART I

### DISTRIBUTION OF SURPLUS TO AN EMPLOYER ON FULL WIND-UP

#### **General Principles**

1. Where an employer wants to be paid surplus on plan wind-up, section 78 of the PBA provides that the employer must apply and that no payment may be made without the Superintendent's prior consent. Before the Superintendent can propose to consent to a surplus application, the applicant must satisfy the requirements of subsection 78(2) of the PBA concerning notice and disclosure of all plan provisions relevant to surplus entitlement on wind-up. In addition, the requirements of subsections 79(3) and (4) of the PBA must be satisfied, as well as all the requirements of the Regulation.
2. Generally, an employer winding up a pension plan should not file a surplus application until after the payment of basic benefits out of the plan has been approved.
3. Compliance with the requirements of the *FSCO Act*, PBA, Regulation and conditions identified in any policy, procedure and administrative practice of the former PCO or of FSCO, which affects the surplus application, is the responsibility of the applicant.
4. Applicants are responsible for ensuring that the information contained in the surplus application and any supporting documents is complete and accurate.

## NOTICE OF THE SURPLUS APPLICATION

### **Content**

5. The Notice of the surplus application required by subsection 78(2) of the PBA must include the information prescribed under subsection 28(5) of the Regulation.
6. With respect to clause 28(5)(c) of the Regulation (i.e., surplus attributable to employee and employer contributions), the methodology used to determine the surplus attributable to employee and employer contributions should be consistent with policy S900-801 ("Surplus Attributable to Employer and Employee Contributions on Plan Wind-up").
7. With respect to clause 28(5)(e) of the Regulation (i.e., the statement that written submissions may be made to the Superintendent within 30 days of receipt of the notice), the notice must state that written submissions are to be directed to the Superintendent.
8. With respect to clause 28(5)(f) of the Regulation (i.e., authority for surplus reversion), there must be full and complete disclosure of all provisions of the plan and trust documentation from inception that may be relevant in determining entitlement to the payment of surplus on wind-up, including provisions in all current and prior plan texts, trust agreements, insurance contracts, employee booklets, employee notices, collective bargaining agreements, information brochures and any other documents that may be relevant.

The actual wording of all the provisions from the plan and trust documentation from inception that may be relevant to surplus entitlement and to the question of authority to make plan amendments must



be cited in the Notice of the surplus application, along with a full analysis of their implications. The Notice of the surplus application must also include a complete historical analysis of all the plan and trust and other documentation that may be relevant to determine whether the plan constitutes a trust. If the plan at any time constituted a trust, the historical analysis must demonstrate that any amendment to the trust that has bearing on surplus entitlement was valid.

Where the plan and trust documentation do not contain explicit provisions addressing surplus entitlement, this fact must also be disclosed in the Notice of the surplus application. It is important to note that if, as of January 1, 1998, the pension plan did not provide for the distribution of surplus on wind-up, the applicant must refer to s. 79(4) of the PBA and its consequences for the surplus application.

If a surplus application requires a court order pursuant to subsection 8(2) of the Regulation, the applicant should refer to the procedure under policy S900-600 ("Making Application Under ss. 7a(2)(c)").

9. The Notice must state that the application and the analysis of the plan documents were prepared by the applicant, and that members, former members or other affected persons may wish to obtain independent legal advice with respect to the application and the proposed surplus distribution agreement before they give any consent.
10. With respect to clause 28(5)(g) of the Regulation (i.e., notice concerning access to copies of the wind-up report), if the office or location where the members were employed is closed, the employer must

make and communicate alternative arrangements close to the location(s) where business was conducted for plan beneficiaries to review the wind-up report filed with the Superintendent in support of the surplus request.

11. If the Notice of the surplus application does not satisfy the requirements of the PBA and the Regulation, or the conditions identified in any policy, procedure or administrative practice of the former PCO or FSCO, or if there has not been complete, full and fair disclosure of all information that may be relevant, the Superintendent may give the employer the opportunity to re-transmit a modified Notice. The employer has a very high obligation of good faith to ensure that full and fair disclosure is given.
12. Subsection 28(5.1) of the Regulation requires that the employer file a copy of the Notice of the surplus application with the Superintendent before it is transmitted.  
  
The Notice of the surplus application should be filed with the Superintendent by sending one (1) copy to:  
  
Superintendent of Financial Services  
Financial Services Commission of Ontario  
5160 Yonge Street, 17th Floor  
Box 85  
North York, ON M2N 6L9
13. With respect to paragraph 7 and subparagraph 29(i), a copy of any written representations filed with the Superintendent will be forwarded to the employer.



### **Transmitting the Notice of the Surplus Application**

14. After the employer files its Notice of the surplus application with the Superintendent, the employer is required to transmit the Notice of the surplus application to all persons listed in subsection 78(2) of the PBA. The employer must satisfy the Superintendent that full and fair notice has been given to those persons.
15. Transmittal must be by personal delivery or first class mail in accordance with subsection 112(1) of the PBA (see paragraphs 17 and 18).
16. Where the plan wind-up results from an event affecting the employment of the members, such as a plant closure, all members participating in the plan on or after the date notice of the event is given must be included as members for purposes of the wind-up, including the surplus distribution. This requirement applies even if a member terminates or is terminated after the notice date but prior to the event actually occurring. Applicants should also refer to policy W100-101 ("Filing Requirements and Procedure").

### **Public Advertisement**

17. The Superintendent may authorize delivery of the Notice of the surplus application by public advertisement or otherwise in accordance with subsection 112(3) of the PBA if the Superintendent is satisfied that it is not reasonable to give individual notice to all persons in accordance with paragraph 14.
18. Where an applicant requests the Superintendent's authorization to deliver the Notice of the surplus application by public advertisement, the information pro-

vided in the draft public advertisement submitted with the request to the Superintendent must clearly indicate the following:

- (a) to whom the notice is addressed (e.g. former members and other persons entitled to payments from the wound-up plan or any applicable predecessor plan(s));
- (b) the reason that these persons are being contacted (i.e., wind-up of the pension plan in a surplus position and the surplus application);
- (c) where the details of the surplus application will be made available; and
- (d) information that persons to whom notice has been transmitted may make written representations to the Superintendent with respect to the surplus application within thirty (30) days after receiving the notice.

### **Written Agreement (Surplus Applications Pursuant to Clause 8(1)(b) of the Regulation)**

#### **Content**

19. When considering the surplus application, the Superintendent must be satisfied that the employer has:
  - (a) provided the affected members, former members and other persons with full and fair disclosure in the copy of the Notice of the surplus application and a copy of the proposed surplus distribution agreement, before obtaining the written consent of these persons;
  - (b) provided the affected members, former members and other persons who are





not currently represented by independent legal counsel with a reasonable opportunity to obtain independent legal advice with respect to the Notice of the surplus application and the proposed surplus distribution agreement;

(c) given these persons sufficient time to consider the surplus application, before the employer obtains the written consent of these persons; and

(d) obtained the number of written agreements required under the Regulation.

20. The surplus distribution agreement must be in writing and must provide for:

- (a) the name of the individual;
- (b) the signature of the individual;
- (c) the date on which it is signed; and
- (d) the signature of the employer.

### **Transmitting the Written Agreement**

21. In order to obtain the written agreements required under clause 8(1)(b) of the Regulation, a copy of the proposed surplus distribution agreement must be given to all persons listed in subsection 78(2) of the PBA. In accordance with subsection 112(1) of the PBA, transmittal must be by personal delivery or first class mail.

A copy of the proposed surplus distribution agreement should be transmitted along with the Notice of the surplus application.

### **Written Agreements**

22. Normally, to satisfy subclause 8(1)(b)(iii) of the Regulation, an applicant should obtain the written agreement of at least two-thirds of the aggregate of those former members and other persons who are entitled to payments under the pension plan on the date of wind-up. This requirement is subject to the Superintendent's discretion following a review of the circumstances of each surplus application.

23. Legal counsel may sign the agreement on behalf of the members they represent at the time the agreement is signed, provided such representation arrangement satisfies the requirements of policy S900-503.

24. The appropriate collective bargaining agent for the purposes of subclause 8(1)(b)(ii) of the Regulation is the collective bargaining agent who represents certain plan members at the date the collective bargaining agent signs the agreement on behalf of those members.

25. A collective bargaining agent may enter into a written agreement only on behalf of those plan members represented by the agent. Therefore, if a pension plan involves more than one bargaining agent, the written agreement of each bargaining agent is required.

26. If a pension plan is provided for both unionized and non-unionized members, in addition to the written agreement of the collective bargaining agent(s), the written agreement of at least two-thirds of those members not represented by the bargaining agent(s) must be obtained.





27. The written agreement of a collective bargaining agent who represents the members of the pension plan must be obtained, even where the collective bargaining agent does not bargain the pension plan.

### **The Surplus Application**

28. The format and content of the surplus application should be consistent with Schedule I to this policy.
29. All material required by the PBA and Regulation must be attached to the surplus application, including:
- (a) A list, by class, of the names of members, former members or other persons who are affected by the wind-up.
  - (b) A certified copy of the notice referred to in subsection 28(5), pursuant to subsection 28(6) of the Regulation.
  - (c) A statement that the employer has complied with subsection 78(2) of the PBA.
  - (d) A list, by class, of the names of members, former members or any other persons who received the Notice of the surplus application, the date the last Notice was transmitted and the form of delivery of the Notice.
  - (e) Copies of all plan and trust documentation from inception, including all current and prior plan texts, trust agreements, insurance contracts, employee booklets, employee notices, collective bargaining agreements, information brochures and any other documents that may be relevant to surplus entitlement. The applicant should highlight the parts of the plan and trust documentation that the applicant believes may be relevant to surplus

entitlement. Full documents should be arranged in chronological order and clearly labelled.

- (f) Copies of the title page and the balance sheet (or any updated balance sheet) of the wind-up report as of the effective date of the wind-up giving rise to the surplus application and the actuary's certification from the wind-up report or any supplemental wind-up report.

A supplement to a wind-up report will be required if it is discovered that the initial report does not reflect the surplus distribution proposals outlined in the surplus application.
- (g) Information required to be submitted to staff in accordance with policy S900-801 ("Surplus Attributable to Employer and Employee Contributions on Plan Wind-up").
- (h) The approval by the Superintendent of the payment of basic benefits based on the wind-up report and any supplementary report.
- (i) A copy of the most recent collective agreement(s) if some or all of the affected members are represented by a collective bargaining agent(s).
- (j) Any written representations objecting to the surplus application received by the applicant directly or through the Superintendent, as well as any response(s) by the applicant.



- (k) Disclosure as to whether or not the Application affects members, former members or other persons with employment in a jurisdiction other than Ontario:

Where the Application affects members, former members or other persons with employment in a jurisdiction other than Ontario (the "Affected Members"), a table indicating the number of members, former members or other persons in each jurisdiction, including Ontario, affected by the application. In addition, the Applicant must provide certification in the form set out in Schedule II that the Applicant has complied with the requirements for surplus distribution of those other jurisdictions with respect to the Affected Members.

The Superintendent reserves the right to review the certification and to require additional information or explanation of the contents of the certification before proceeding with the application.

- (l) Any submissions which may be relevant to the surplus application.

Where other materials or information which may be relevant are discovered after the surplus application has been filed, such materials or information must be filed as an addendum to the initial surplus application (see paragraph 31).

- (m) Where the surplus application is made pursuant to clause 8(1)(b) of the Regulation,

- i) a copy of the proposed surplus distribution agreement;

- ii) a list, by class, of the names of members, former members or other persons who received a copy of the proposed surplus distribution agreement, the last date the agreement was transmitted and the form of delivery of the agreement;
- iii) a sample copy of the written agreement obtained from a plan member, former member, or other person with respect to the proposed surplus distribution agreement;
- iv) copies of the written agreement(s) between the employer and any collective bargaining agent(s) that pertain to the surplus distribution agreement; and
- v) a list of the members, former members or other persons who did not agree to the proposed distribution agreement or did not respond.

- (n) Where the surplus application is made pursuant to subsection 8(2) of the Regulation, the applicant should refer to policy S900-600 ("Making Application Under ss. 7a(2)(c)"). If the applicant has already obtained a court order concerning entitlement to surplus and distribution of funds from surplus, a copy of the court order must be attached to the surplus application.

### **Filing the Surplus Application**

30. (a) The general procedure is outlined in policy S850-200 ("Filing Applications with the Superintendent of Financial Services").



- (b) The surplus application, including attachments, should be submitted on 8-1/2" x 11" paper (subject to legibility).
31. The surplus application is filed with the Superintendent by sending four (4) copies to:
- Superintendent of Financial Services  
Financial Services Commission of Ontario  
5160 Yonge Street, 17th Floor  
Box 85  
North York ON M2N 6L9
- Four (4) copies of any information or materials which are supplemental to the initial filing and which are required in order to complete the surplus application should be filed with the Superintendent.
32. Upon receipt, the surplus application will be acknowledged.
33. The Superintendent will not consider the surplus application unless the Superintendent has approved the payment of basic benefits on the basis of the wind-up report.
34. The applicant must forward a copy of the surplus application to the plan administrator.
35. For surplus applications made pursuant to clause 8(1)(b) of the Regulation, a copy of a sample signed written agreement should be included in each of the four (4) copies submitted to the Superintendent. As well, two full sets of all of the signed written agreements obtained from plan members, former members, and other persons with respect to the disclosed surplus distribution agreement must be filed with the Superintendent. One set should include all the original signed written agreements.

### **Review Process**

36. (a) If staff believe that an application is incomplete, they will advise the applicant in writing. The applicant must submit four (4) copies of the documentation required to complete the application.
- (b) The review of a surplus application will not proceed until the earlier of the date when:
- (i) staff receive all of the information requested;
  - (ii) the applicant submits a written request asking that the surplus application proceed as is (i.e., without submitting the additional information that staff have requested); or
  - (iii) the time period for a response, as set out in the letter from staff, expires.
37. Staff will then review the surplus application and all other filed materials for compliance with the *FSCO Act*, PBA, Regulation and relevant policies, procedures and administrative practices. If any compliance concerns are identified, staff will send a letter outlining their concerns to the applicant, the collective bargaining agent(s) of the members (if applicable), and any person who has made written representations under section 78(3) of the PBA.





38. Staff's letter will specify the time period in which the applicant, the collective bargaining agent(s) of the members (if applicable) or any person who has made written representations under section 78(3) of the PBA must provide a written response to the compliance concerns, if they wish to have the response considered in the decision-making.

Four (4) copies of the written response must be submitted to the Superintendent.

39. The Superintendent's proposed decision will be served on the applicant and on any person who has made written representations under s. 78(3) of the PBA, by way of a notice of proposal with written reasons.

40. A person on whom the notice of proposal is served is entitled to a hearing before the Financial Services Tribunal ("Tribunal") under s. 89(6) of the PBA if the person delivers to the Tribunal written notice requiring a hearing within thirty (30) days after being served with the notice of proposal.

41. If no notice requiring a hearing is received within the specified time frame, the Superintendent may carry out the proposed decision.

42. Applicants should refer to policy S850-100 ("Delegation of the Superintendent's Authorities") for additional information on the decision-making process.

### **Member Statement**

43. On March 3, 2000, the Regulation was amended to include a new section 28.1, which provides that if there is surplus on the wind-up of a plan, in whole or in part, the administrator shall provide, within the prescribed period, a statement containing the prescribed information about surplus to

affected members. These statements are to be provided after the Superintendent has approved the wind-up report, including the disposition of surplus. Applicants should ensure that the requirements of this section have been satisfied.

## **PART II DISTRIBUTION OF SURPLUS TO AN EMPLOYER ON PARTIAL WIND-UP**

### **Modifications to Part I for Partial Wind up**

Part I procedures will apply with respect to partial wind ups subject to the following:

1. For the purpose of a surplus application under Part II of this policy, any reference to "full wind-up" or "wind-up" under Part I of this paper should be read as "partial wind-up".
2. Those persons listed in subsection 78(2) of the PBA must receive the Notice of the surplus application by personal delivery or first class mail in accordance with subsection 112(1) of the PBA.
3. The following persons must also receive a copy of the proposed surplus distribution agreement:
  - (a) all persons who are affected by the partial wind-up (i.e., those persons who are entitled to receive payment from the pension plan as a result of the event which gave rise to the partial wind-up),
  - (b) all persons who ceased to be employed as a result of the event which gave rise to the partial wind-up, and
  - (c) each collective bargaining agent that represents any members under the plan at the date of partial wind-up.

The applicant must satisfy the Superintendent that full and fair notice has been given.





4. For the purposes of obtaining written agreement in accordance with subclause 8(1)(b)(ii) of the Regulation, the appropriate collective bargaining agent is the collective bargaining agent who represents certain plan members at the date the collective bargaining agent signs the agreement on behalf of those members.

No written agreement is required from a collective bargaining agent who, at the date of partial wind-up, does not represent members affected by the partial wind-up.

5. Where written agreement is required pursuant to subclause 8(1)(b)(ii) of the Regulation, and there is no collective bargaining agent who represents the members who are affected by the partial wind-up, written agreement must be obtained from at least two-thirds of the members who are affected by the partial wind-up.
6. For the purposes of subclause 8(1)(b)(iii) of the Regulation, the written agreement of at least two-thirds of the aggregate of the former members and other persons who are directly affected by the partial wind-up should be obtained. This requirement is subject to the Superintendent's discretion following a review of the circumstances which are applicable to each individual surplus application.
7. The applicant must satisfy the Superintendent that the requirements of the PBA and Regulation have been met.

## Schedule I

### Format and Content of the Application to the Superintendent for Consent to the Refund of Surplus to an Employer

- DATE:** *Enter the date of the surplus application.*
- EMPLOYER:** *Provide the correct legal name of the employer making the surplus application.*
- PENSION PLAN:** *Provide the full registered name of the pension plan and the registration number.*
- APPLICANT:** *Provide the name, title and business address of the corporate officer authorized to act on the employer's behalf. (Unless otherwise indicated in the surplus application, all communication from the Superintendent and staff of FSCO will be directed to the agent or counsel who files the surplus application on the applicant's behalf.)*

### Nature of the Surplus Application:

*Provide a full description of the surplus application to the Superintendent with reference to the specific section(s) of the PBA and Regulation pursuant to which the surplus application is being made. For example:*

*Application for the Superintendent's consent pursuant to subsection 78(1) of the Pension Benefits Act, R.S.O. 1990, c. P. 8, as amended, and clause 8(1)(b) of Regulation 909, R.R.O. 1990, as amended, to a payment of surplus to (provide full legal name of the employer) in the amount of \$ (show the amount sought at the effective date of wind-up) as at (show the effective date of wind-up) plus investment earnings thereon to the date of payment (add reference if employer is seeking any other*

*adjustment in its request for the surplus refund).*

This application includes a surplus distribution agreement whereby (x) per cent of the surplus as of the effective date of wind-up will be distributed to the members, former members and other persons entitled to benefits as of the effective date of wind-up in the form of indexed benefits.

*Appropriate modifications will be required for surplus applications based on a court order pursuant to subsection 8(2) of the Regulation.*

### Actuary/Counsel/Agent:

Provide the name of any person acting as the agent or counsel for the employer making the surplus application, or acting on behalf of the members, former members or other persons. If there are no such persons, please indicate "None".

Actuary for the Applicant  
(and name of firm):

Counsel for the Applicant  
(and name of firm):

Actuary for the Members/former members/union/etc. (and name of firm):

Counsel for the Members/former members/union/etc. (and name of firm):

### Plan Administrator:

*Provide the name and address of the person designated to act as plan administrator, if different from the corporate officer acting for the applicant employer.*

### Collective Bargaining Agent:

*Provide the name of the Collective Bargaining Agent(s) who represent any members or former members of the pension plan.*

### Background:

*Provide a brief summary of the background of the plan leading up to the surplus application including:*



- the effective date of the plan;
- the classes of members covered by the plan;
- the basic benefit structure (e.g. “non-contributory”, “flat benefit plan”);
- a brief chronology of the plan and prior versions thereof, including any pension plan from which assets of the wound-up pension plan can be traced (include references to asset transfers to or from the pension fund of another pension plan, plan conversions, and partial wind ups that may have occurred prior to the date of wind-up);
- the corporate history relevant to the plan and any predecessor plans, including the background to any changes in the name of the employer associated with the pension plan;
- the effective date and reasons for the wind-up of the pension plan; and
- any other information which will assist in understanding the surplus application.

### Subsection 78(2) of the PBA – Notice Requirements

The applicant must satisfy the Superintendent that the persons listed in subsection 78(2) have received full and fair notice and that the requirements of the PBA and Regulation have been satisfied.

#### (a) Subsections 28(5) and 28(5.1) of the Regulation:

Provide information indicating how the applicant has complied with

- subsection 28(5) and any related policies, procedures or administrative practices setting out the minimum content to be included in the Notice of the surplus application required under subsection 78(2) of the PBA. This minimum content does not alter the applicant's obligation to ensure that full and fair notice is given.
- subsection 28(5.1) which requires that a copy of the Notice of the surplus application be filed with the Superintendent prior to transmittal to the members, former members and other persons.

#### (b) Subsection 28(6) of the Regulation:

Provide information demonstrating compliance with subsection 28(6) of the Regulation which requires that the surplus application be accompanied by a certified copy of the Notice of the surplus application signed by the corporate officer authorized to act for the applicant, a statement signed by that corporate officer that subsection 78(2) of the PBA has been complied with, the date the last Notice of the surplus application was distributed and details as to the classes of persons who received notice. Include reference to the attachment or tab at which the certified copy of the notice may be found.

### Subsection 112(3) of the PBA – Alternate Service:

*If, in lieu of individual notice, the Notice of the surplus application is transmitted by public advertisement, indicate the classes or groups who were served by the public advertisement, the dates and newspapers in which the advertisement ran and provide a copy of the advertisement.*

*If, in lieu of individual notice, the Notice of the surplus application is transmitted by an alternative form of notice other than public advertisement, indicate the classes or groups who were served by the alternative form of notice, the dates and method by which the alternative form of notice was served and provide a copy of the alternative form of notice.*

*Refer to the attachment or tab in the surplus application where a copy of the public advertisement or alternative form of notice and the Superintendent's authorization for alternative service are found.*

### Subsection 79(3) of the PBA – Conditions Precedent to a Proposal to Consent

*In the following sections, the applicant must satisfy the Superintendent that all the conditions in the PBA and Regulation have been met.*

#### (a) Clause 79(3)(a) – The Plan has a Surplus:

*The applicant must demonstrate that the plan has a surplus.*

*Provide the date of the letter from the Superintendent approving the distribution of the members' and former members' basic benefits. Refer to the attachment or tab at which extracts of the wind-up report and supplemental report and a copy of the Superintendent's letter may be found. Include in the surplus application a brief summary of the balance sheet for the plan as at the effective date of wind-up along with an updated balance sheet if there has been any significant change in the figures. For example:*

Balance Sheet	As at effective date of wind-up	As of (current date)
Market value of assets	\$ .00	\$ .00
Liabilities		
Basic benefit entitlements	\$ .00	\$ .00
Liabilities for enhancements	\$ .00	\$ .00
Expenses	\$ .00	\$ .00
Surplus	\$ .00	\$ .00

#### Surplus distribution agreement as of (date):

To employees	\$ .00 (%)
To employers	\$ .00 (%)

#### (b) Clause 79(3)(b) of the PBA – The Plan Provides for the Payment of Surplus to the Employer on the Wind-up of the Pension Plan:

*The applicant employer must satisfy the Superintendent that the plan provides for the payment of surplus to the employer on wind-up. Therefore, the surplus application must establish that the employer is legally entitled to the payment of surplus on wind-up. The employer must provide a complete chronological history of the plan, and any predecessor or prior plans that may be relevant, and copies of all plan and trust documentation since inception, including all current and prior plan texts, trust agreements, insurance contracts, employee booklets, employee notices, collective bargaining agreements, information brochures and any other documents that may be relevant to the Superintendent's determination of whether a plan provides for the payment of surplus to the employer. The employer must also provide a full analysis showing how it reaches the conclusion that it, and not the plan beneficiaries, is entitled to the surplus.*





Where there are prior pension plans from which the current plan assets can be traced, or that that may otherwise be relevant, the history must take into account the prior plan texts, trust agreements, insurance contracts, employee booklets, employee notices, collective bargaining agreements, information brochures and any other documents that may be relevant to the Superintendent's determination of whether a plan provides for the payment of surplus to the employer.

Where any plan or trust documentation that may be relevant has been amended since its inception, the history must spell out the authority under the plan or trust to amend the provision or document. The history must also refer to all provisions or documents that do not support the surplus application.

The applicant should highlight the portions of the documents that may be relevant to the Superintendent's decision on surplus entitlement, including those provisions that do **not** support the applicant's claim to surplus. Complete documents must be included as attachment(s) to the surplus application and must be clearly labelled.

All documents must be complete, arranged in chronological order and clearly labelled. All portions of the documents that may be relevant, whether or not they support the applicant's claim to surplus, must be highlighted.

As of January 1, 1998, if the pension plan did not provide for the distribution of surplus on wind-up, the applicant must refer to subsection 79(4) of the PBA and its consequences for the surplus application.

- (c) Clause 79(3)(c) of the PBA – Provision has been made for the Payment of All Liabilities of the Pension Plan:

Outline the status of the distributions of basic benefits and surplus to members, former members and any other persons entitled to payments. If the Superintendent is not satisfied that adequate provision has been made for the payment of all liabilities of the pension plan, the Superintendent may propose to refuse the surplus application.

- (d) Clause 8(1)(b) of the Regulation – Written Agreement

Provide a summary of the notices issued and signed surplus distribution agreements provided. For example:



	Total Number	Notices Issued	Written Consents	(%)
Employer	_____	_____	_____	_____
Collective Bargaining Agent(s)	_____	_____	_____	_____
Members	_____	_____	_____	_____
Former Members/ Other Persons	_____	_____	_____	_____

### Subsection 8(2) of the Regulation – The Court Order

#### (a) Clause 8(2)(b) of the Regulation – Eligibility as a “Grandfathered Plan”:

*Provide information supporting the applicant’s position that the surplus application is eligible to proceed under subsection 8(2), the “grandfathering provision”.*

The applicant may make application pursuant to clause 7a(2)(c) of O. Reg. 708/87 as that section read immediately before December 18, 1991 as (*enter the reason why the plan is a “grandfathered plan”, i.e., “the notice of proposal to wind-up was filed prior to December 18, 1991” – enter the date the notice of proposal to wind-up the plan was given to the Superintendent*).

#### (b) Clause 8(2)(a) of the Regulation – The Status of the Application to Court:

*Provide information concerning the status of the application to the court. Refer to the attachment which indicates the applicant’s intention or where the copy of the order is located.*

The applicant has applied to the court for an order pursuant to clause 7a(2)(c) of O. Reg. 708/87 as that section read immediately before December 18, 1991 (*enter “and has obtained” or “and is to obtain”*) an order for payment of the surplus assets to the applicant on termination of the Plan.

### Other Jurisdictions

*The applicant must disclose whether or not the plan has members, former members or other persons with benefits resulting from employment in a jurisdiction other than Ontario. Applicants should refer to paragraph 29(k) under “The Surplus Application”, of this policy and complete the attached certification (“Schedule II”).*

### Representations

*The employer must specify whether or not it received any objections or representations and attach to the surplus application copies of those objections or representations and any response(s) by the employer.*

### Attachments

*Provide an index of all attachments to the surplus application. The attachments should be listed in the order that corresponds to the order of the subject matter under this document and, where applicable, in chronological order. Where a surplus application is bound, the relevant tab numbers and their contents should also be included in the index.*

### SIGNATURE

*The application must be signed by the applicant, or the authorized officer or agent of the applicant. The person signing the application should print their name below their signature and should indicate the capacity in which they have signed the application (i.e., applicant or agent or authorized signing officer of the applicant).*



## Schedule II

### Certification of Compliance with Surplus Requirements of Other Jurisdictions

- DATE:** *Enter the date of the surplus application.*
- EMPLOYER:** *Provide the correct legal name of the employer making the surplus application.*
- PENSION PLAN:** *Provide the full registered name of the pension plan and the registration number.*
- APPLICANT:** *Provide the name, title and business address of the corporate officer authorized to act on the employer's behalf. (Unless otherwise indicated in the surplus application, all communication from the Superintendent and staff of FSCO will be directed to the agent or counsel who files the surplus application on the applicant's behalf.)*

### I Certify to the Superintendent of Financial Services that:

- I, the individual making this certification, am the applicant or the agent or authorized officer of the applicant;
- The application affects members, former members or other persons with employment in a jurisdiction other than Ontario (the "Affected Members");
- I am aware of, or have consulted with professionals who have advised me of, the requirements of the laws applicable to surplus distribution of the jurisdictions of the Affected Members, and I have reviewed the application in order to determine whether it complies with such laws;
- I certify that, to the best of my knowledge and belief, based on the information and advice provided me, including that referred to herein, this application complies with the requirements for surplus distribution of those jurisdictions outside of Ontario with respect to Affected Members.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(day) (month) (year)

\_\_\_\_\_  
Signature of Administrator or Administrator's Agent or Representative

\_\_\_\_\_  
Name of Administrator or Administrator's Agent or Representative (printed)

\_\_\_\_\_  
Address of Administrator or Administrator's Agent or Representative (printed)

*It is an offence under the Criminal Code, R.S.C. 1985, c. C-46, as amended, for anyone to knowingly make a false document with the intent that it be acted on as genuine.*

## Superintendent of Financial Services

### Appointment of Administrators – Section 71 of the PBA

- 1) **Arthur Andersen Inc.** as the Administrator of the **IPCO Corporation Canadian Employees' Retirement Plan**, (Registration No. 584417), effective immediately.  
DATED at Toronto, Ontario this 23rd day of November, 1999.
- 2) **PricewaterhouseCoopers Inc.** as the Administrator of the **Eaton Retirement Annuity Plan II** (Registration No. 1036102), effective immediately.  
DATED at Toronto, Ontario this 1st day of December, 1999.
- 3) **PricewaterhouseCoopers Inc.** as the Administrator of the **Eaton Superannuation Plan for Designated Employees** (Registration No. 0593673), effective immediately.  
DATED at Toronto, Ontario this 1st day of December, 1999.
- 4) **Ronald A. Hubert** as the Administrator of the **Pension Plan of the T. Eaton Company Limited for R.A. Hubert** (Registration No. 1029321), effective immediately.  
DATED at Toronto, Ontario this 3rd day of December, 1999.
- 5) **PricewaterhouseCoopers Inc.** as the Administrator of the **Eaton Retirement Annuity Plan III** (Registration No. 1037035), effective immediately.  
DATED at Toronto, Ontario, this 1st day of December, 1999.
- 6) **Roy Evans** as the Administrator of the **Pension Plan of the T. Eaton Company Limited for Roy Evans** (Registration No. 1031798), effective immediately.  
DATED at Toronto, Ontario this 3rd day of December, 1999.
- 7) **Rex P. Prangle** as the Administrator of the **Pension Plan of the T. Eaton Company Limited for Rex P. Prangle** (Registration No. 1031806), effective immediately.  
DATED at Toronto, Ontario this 10th day of December, 1999.
- 8) **C. Reginald Hunter** as the Administrator of the **Pension Plan of the T. Eaton Company Limited for C. Reginald Hunter** (Registration No. 1031780), effective immediately.  
DATED at Toronto, Ontario this 14th day of December, 1999.
- 9) **Buck Consultants** as the Administrator of the **Retirement Plan for Employees of Great Lakes Wire Limited**, (Registration No. 915926), effective immediately.  
DATED at Toronto, Ontario this 19th day of December, 1999.
- 10) **Deloitte & Touche Inc.** as the Administrator of the **Retirement Plan for Hourly Employees of Superior Machine & Tool (Chatham) Limited**, (Registration No. 327601), effective immediately.  
DATED at Toronto, Ontario this 29th day of December, 1999.





- 11) **Deloitte & Touche Inc.** as the Administrator of the **Superior Machine & Tool (Chatham) Limited Retirement Plan for Salaried Employees**, (Registration No. 691642), effective immediately.

DATED at Toronto, Ontario this 29th day of December, 1999.

- 12) **Clarica Life Insurance Company** as the Administrator of the **Registered Pension Plan for Salaried (Non-Union) Employees of JPE Canada Inc.** (Registration No. 1038330), effective immediately.

DATED at Toronto, Ontario this 19th day of January, 2000.

- 13) **William M. Mercer Limited** as the Administrator of the **Retirement Plan Sponsored by Diversified International Products Limited for Bruce McLarty** (Registration No. 1022482), effective immediately.

DATED at Toronto, Ontario this 19th day of January, 2000.

- 14) **Clarica Life Insurance Company** as the Administrator of the **Pension Plan for Employees of Med-Chem Laboratories Limited and Participating Affiliates**, (Registration No. 372896), effective immediately.

DATED at Toronto, Ontario this 16th day of March, 2000.

- 15) **Buck Consultants Limited** as the Administrator of the **Retirement Plan for Employees of Piggott Construction Limited**, Registration No. C-4989, effective immediately.

DATED at North York, Ontario this 6th day of July, 2000.

## Withdrawal of Notice Proposal

### Financial Services Commission of Ontario

Chief Executive Officer and  
Superintendent, Financial Services

5160 Yonge Street  
Box 85, 17th Floor  
North York ON M2N 6L9

Telephone: (416) 590-7000  
Facsimile: (416) 590-7078

### Commission des services financiers de l'Ontario

Directeur général et  
surintendant, Services financiers

5160, rue Yonge  
boîte 85 17<sup>e</sup> étage  
North York ON M2N 6L9

Téléphone: (416) 590-7000  
Télécopieur: (416) 590-7078



May 19, 2000

DELIVERED

Ms. Bebe Brown, Registrar  
Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
Toronto ON M2N 6L9

Dear Ms. Brown:

**RE: FST File #P0059-1999**  
**Labourers' Pension Fund of Central and Eastern Canada, 573188 (the "Fund")**

I hereby withdraw my Notice of Proposal to make an Order dated May 18, 1999 as the Applicant has complied with the terms thereof to my satisfaction.

In particular, the Actuarial Valuation as of December 31, 1998 dated August 1999 as augmented by letter dated October 27, 1999 (which was prepared by the Fund's Actuary based on the Actuarial Report on Proposed Restructuring and Long-Range Testing of the Plan dated January 1998) together disclose the existence and amount of the plan's solvency deficiency as at December 31, 1996, December 31, 1997 and December 31, 1998, and demonstrate the sufficiency on an ongoing and solvency basis of the contributions required by the collective agreement or agreements to provide for the benefits set out in the plan without consideration of any provision for reduction of benefits set out in the plan, pursuant to subsection 6(4) of the Regulation under the *Pension Benefits Act*.

Yours truly,

Dina Palozzi  
Chief Executive Officer and  
Superintendent of Financial Services

c.c.: Mr. Ray Koskie, Koskie Minsky  
Mr. O. D'Agostini, Labourers Pension Fund  
Mr. Peter Hirst, Buck Consultants  
Mr. K. David Gordon, FSCO, Pension Plans Branch  
Mr. George Ma, FSCO, Pension Plans Branch  
Ms. Lynda Ellis, FSCO, Pension Plans Branch



## Notices of Proposal to Make an Order

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28* (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 88 of the *Act*, respecting the **Labourers' Pension Fund of Central and Eastern Canada, Registration No. 0573188;**

TO: Board of Trustees  
Labourers' Pension Fund of  
Central and Eastern Canada  
P.O. Box 40, Station "Q"  
Toronto, ON  
M4T 2L7

Attention: Mr. Onorio D'Agostini  
Administrator  
**Administrator of the  
Labourers' Pension Fund of  
Central and Eastern Canada**

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON M2N 6L9  
Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario this 18th day of May, 1999.

Dina Palozzi  
Superintendent of Financial Services

### **Notice of Proposal to Make an Order**

I PROPOSE TO MAKE AN ORDER in respect of the Labourers' Pension Fund of Central and Eastern Canada, Registration No. 0573188 (the "Plan") under section 88 of the *Act*. The Proposed Order and Reasons are attached to and form part of this Notice of Proposal to Make an Order.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing. Any notice requiring a hearing shall be delivered to:



**IN THE MATTER OF** The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*);

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **McCormick, Rankin & Associates Designated Pension Plan. Registration No. 686675**

**TO:** McCormick, Rankin &  
Associates Limited  
2655 North Sheridan Way  
Mississauga, ON  
L5K 2P8

Attention: Evelyn J. Gowan  
Controller

**Applicant and Employer**

### **Notice of Proposal**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment, out of the **McCormick, Rankin & Associates Designated Pension Plan, Registration No. 686675** (the Plan), to McCormick, Rankin & Associates Limited in the fixed amount of \$354,000.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that payment of all the benefits to the members as per the surplus sharing agreement defined in paragraph 5 below has been provided for.

**I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. McCormick, Rankin & Associates Limited is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective January 31, 1997.

3. As at February 28, 1999 the surplus in the Plan was estimated at \$1,668,586.
4. The Plan provides for payment of surplus to the Employer on the wind-up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 100% of the members (as defined in the application), the surplus in the Plan at the date of payment, after deduction of the expenses related to the wind-up of the plan and the application as well as the extent to which investment returns fluctuate and interest rates on the fund differ from those assumed in the calculation of liabilities is to be distributed:
  - a) a fixed amount of \$354,000.00 to the Employer; and
  - b) the portion of the assets in the Fund attributable to the contributions made by the Company on his behalf on or after January 1, 1992; plus
  - c) the portion of the assets of the Fund attributable to the Company and Member's contributions to the Retirement Plan for the Employees of McCormick, Rankin & Associates Limited (the "Prior Plan") up to and including December 31, 1991, which were transferred to the Plan as at January 1, 1992; minus
  - d) the commuted value of the Member's entitlement under the Plan; minus
  - e) \$2,000 multiplied by the number of years of the Member's service in either the Plan or the Prior Plan prior to 1996; in a taxable lump sum.





6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of a fixed amount of \$354,000.00 of the surplus in the Plan.
7. The application appears to comply with section 78 of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing<sup>1</sup>.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON  
M2N 6L9

Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, January, 2000.

Dina Palozzi

Superintendent of Financial Services

<sup>1</sup> NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the *Act*);

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to consent pursuant to subsection 78(1) of the *Act* to payment of surplus out of the **Retirement Plan for Eligible Employees of Midland Lumber & Building Supplies Ltd., Registration No. 954990** (the Plan)

**TO:** Midland Lumber & Building  
Supplies Ltd.  
200 Third Street  
PO Box 39  
Midland, ON  
L4R 4K6

Attention: Mr. Robert F. Bray  
President  
**Employer**

### **Notice of Proposal**

**I PROPOSE**, pursuant to subsection 78(1) of the *Act*:

1. **TO CONSENT** to payment out of the Plan to the Employer of 50% of the Royal Trust Surplus (defined as that portion, estimated at \$181,748 as at December 31, 1997, of the surplus invested in the Bonavista Balanced Fund administered by the Royal Trust Corporation of Canada, plus investment earnings thereon to the date of payment less the reasonable expenses associated with its distribution).

**THIS CONSENT SHALL NOT BE EFFECTIVE UNTIL** the Employer has satisfied me that 50% of the Royal Trust Surplus has been paid out of the Plan to all members, former members and other persons entitled to

payment pursuant to the Surplus Sharing Agreements filed with the Employer's application.

2. **TO CONSENT** to payment out of the Plan to the Employer of 50% of the Confederation Life Surplus (defined as such amount or amounts as may be paid to the Plan from time to time of that portion, estimated at \$49,317 as at December 31, 1997, of the surplus invested in the Confederation Guaranteed Fund administered by the liquidator of Confederation Life Insurance Company, plus investment earnings thereon to the date of payment less the reasonable expenses associated with its distribution).

**THIS CONSENT SHALL NOT BE EFFECTIVE UNTIL** the Employer has satisfied me that 50% of the Confederation Life Surplus has been paid out of the Plan to all members, former members and other persons entitled to payment pursuant to the Surplus Sharing Agreements filed with the Employer's application.

### **I PROPOSE TO SO CONSENT FOR THE FOLLOWING REASONS:**

1. The Employer has initiated a full wind-up of the Plan effective December 31, 1994.
2. There is a surplus in the Plan totalling an estimated \$231,065 as at December 31, 1997, of which an estimated \$181,748 is invested in the Bonavista Balanced Fund administered by the Royal Trust Corporation of Canada and is available for immediate distribution, and of which an estimated \$49,317 is invested in the Confederation Guaranteed Fund administered by the liquidator of Confederation Life Insurance Company and is not available for immediate distribution, but all or part of which may be paid to the



Plan and become available for distribution in future.

3. By written agreements between the Employer and certain members, former members and persons entitled to payments under the Plan ("the entitled persons") on the date of the wind-up (the "Agreement"), the surplus in the Plan available for distribution is to be distributed:
  - a) One-half to the credit of the Employer; and
  - b) One-half to the credit of the entitled persons.
4. The Employer has applied, pursuant to sections 78 & 79 of the *Act*, for the consent of the Superintendent of Financial Services to the payment of 50% of the Royal Trust Surplus and 50% of the Confederation Life Surplus from the Plan to the Employer.
5. The application appears to comply with section 78 and subsection 79(3) of the *Act* together with subsections 8(1), 28(5), 28(5.1) and 28(6) of Regulation 909 made thereunder.
6. Such further and other reasons that come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON  
M2N 6L9

Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario, March, 2000.

Dina Palozzi

Superintendent of Financial Services

<sup>1</sup> NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Pension Plan for Employees of Elgistan Management Limited and Associated Companies**.  
Registration No. 0245886

TO: Elgistan Management Limited  
215 Sydney Street  
Cornwall, ON  
K6H 3H3

Attention: John K. McBride  
President  
**Applicant and Employer**

### **Notice of Proposal**

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment, out of the **Pension Plan for Employees of Elgistan Management Limited and Associate Companies**, Registration No. 0245886 (the Plan), to Elgistan Management Limited in the amount of \$2,177,568 plus investment earnings minus expenses incurred thereon to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph 5 below) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Elgistan Management Limited is the employer as defined in the Plan (the "Employer")
2. The Plan was wound up, effective February 28, 1999
3. As at February 28, 1999, the surplus in the Plan was estimated at \$2,903,424
4. The Plan provides for payment of surplus to the Employer on the wind-up of the Plan
5. The application discloses that by written agreement made by the Employer, and 100% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind-up expenses is to be distributed:
  - a) 75% to the Employer; and
  - b) 25% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 75% of the net surplus in the Plan
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.





**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the Tribunal) pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON  
M2N 6L9

Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 10th day of March, 2000.

Dina Palozzi  
Superintendent of Financial Services

<sup>1</sup> NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **McCann-Erikson Advertising of Canada Ltd. Pension Plan, Registration No. 0596783**

TO: MacLaren McCann Canada Inc.  
10 Bay Street  
Toronto, ON  
M5J 2S3

Attention: Erwin W. Buck  
Executive Vice-President and  
Chief Financial Officer  
**Applicant and Employer**

### **Notice of Proposal**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment, out of the **McCann-Erikson Advertising of Canada Ltd. Pension Plan, Registration No. 0596783** (the Plan), to MacLaren McCann Canada Inc. in the amount of \$3,030,778.00.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that the administrator has paid out all benefits and other payments, including any enhancements arising from the surplus sharing agreement, to which members, former members and any other persons are entitled on the termination of the pension plan.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. **MacLaren McCann Canada Inc.** is the employer as defined in the Plan (the Employer)
2. The Plan was wound up, effective October 31, 1998
3. As at October 31, 1998, the surplus in the Plan was estimated at \$4,546,167
4. The Plan provides for payment of surplus to the Employer on the wind-up of the Plan
5. The application discloses that by written agreement made by the Employer, and 100% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind-up expenses is to be distributed:
  - a) 66.6% to the Employer; and
  - b) 33.3% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 66.6% of the surplus in the Plan (after adding 66.6% of investment earnings and deducting 66.6% of the expenses related to the wind-up of the Plan.)
7. The application appears to comply with section 78 and subsections 79(3)(a) and 79(3)(b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.



**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the Tribunal) pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON  
M2N 6L9

Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario, this 20th day of March, 2000.

Dina Palozzi  
Superintendent of Financial Services

<sup>1</sup> NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Retirement Plan for the Staff of Gold Fields Canadian Mining Limited. Registration No. 438382**

TO: Peabody Natural Resources Company  
701 Market Street  
Suite 700  
St. Louis, MI  
USA 63101-1826

Attention: H. Robert Sanders  
Applicant and Employer

### **Notice of Proposal**

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment, out of the **Retirement Plan for the Staff of Gold Fields Canadian Mining Limited, Registration No. 438382** (the Plan), to Peabody Natural Resources Company in the amount of \$245,294 as at November 4, 1992, plus investment earnings and after deduction of wind-up expenses.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me all benefits, including any enhancements arising from the surplus sharing agreement, to which active members and former members are entitled on the wind-up of the plan, have been settled.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Peabody Natural Resources Company is the employer as defined in the Plan.
2. The Plan was wound up, effective November 4, 1992.
3. As at November 4, 1992, the surplus in the Plan was estimated at \$490,588.
4. The Plan provides for payment of surplus to the Employer on the wind-up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 68.4% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind-up expenses is to be distributed:
  - a) 50% to the Employer; and
  - b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan (after adding investment earnings).
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.





**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the Tribunal) pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON  
M2N 6L9

Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario, this 29th day of March, 2000.

Dina Palozzi  
Superintendent of Financial Services

<sup>1/</sup> NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c.P. 8 as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Retirement Plan for the Employees of Maysfield Property Management (1987) Inc., Registration No. C-103046;**

**TO:** Superintendent of  
Financial Services  
Financial Services  
Commission of Ontario  
5160 Yonge Street, 17th Floor  
North York, ON M2N 6L9

**Attention:** Larry Falconer  
Coordinator, Insolvencies  
**Administrator of the  
Retirement Plan for the  
Employees of  
Maysfield Property  
Management (1987) Inc.**

**AND TO:** Maysfield Property  
Management (1987) Inc.  
1200 Sheppard Avenue East  
Lower Level  
Willowdale, ON M2K 2K2

**Attention:** C.A. Ewing  
Vice-President  
**Employer**

**Notice of Proposal to Make an Order**

**I PROPOSE TO ORDER** that the Retirement Plan for the Employees of Maysfield Property Management (1987) Inc., Registration No.

**C-103046**, be wound up in part in respect of Divisions 469 and 830 of Maysfield Property Management (1987) Inc., effective November 30, 1992.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O.1990, c.P 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S. O. 1997, c. 28 (the "Act").

**I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by the Act or the regulations.

**YOU** are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served upon you, you deliver to the Tribunal a written notice that you require a hearing. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario, this 28th day of April, 2000.

Dina Palozzi  
Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c.P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **FBI Brands Ltd. – Les Marques FBI Ltée & Designated Affiliated and Subsidiary Companies Pension Plan, Registration No. 951996.**

TO: Buck Consultants  
P.O. Box 15, Suite 1500  
95 Wellington Street West  
Toronto, ON  
M5J 2N7

Attention: Ms. Wafaa Babcock  
Consulting Actuary  
**Administrator of the FBI Brands Ltd. – Les Marques FBI Ltée & Designated Affiliated and Subsidiary Companies Pension Plan**

AND TO: FBI Brands Ltd. –  
Les Marques FBI Ltée  
Suite 301  
6700 Côte de Liesse  
Ville St-Laurent, PQ  
H4T 2B5

Attention: Mr. Anthony Tondino  
Chief Financial Officer  
**Employer**

### **Notice of Proposal to Make an Order**

I PROPOSE TO ORDER that the **FBI Brands Ltd. – Les Marques FBI Ltée & Designated Affiliated and Subsidiary Companies Pension Plan, Registration No. 951996**, be wound up in whole effective October 22, 1998.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the “Act”).

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension of employer contributions to the pension fund; and
2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations.

YOU are entitled to a hearing by the Financial Services Tribunal (the “Tribunal”) pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON  
M2N 6L9

Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**THE ADMINISTRATOR IS REQUIRED** pursuant to subsection 89(5) of the *Act*, to transmit



a copy of this Notice of Proposal to Make an Order to the following persons:

United Food & Commercial Workers  
International Union, Local 175  
20 Hamilton Avenue North  
Ottawa, ON K1Y 1B6  
Attention: Mr. Ray Bromley  
Union Representative

**Union**

KPMG Inc.  
P.O. Box 976  
Suite 700  
21 King St. W.  
Hamilton, ON  
L8N 3R1

Attention: Mr. Brad Newton  
Senior Manager

**Receiver and Trustee in Bankruptcy**

DATED at Toronto, Ontario this  
28th day of April, 2000.

Dina Palozzi  
Superintendent of Financial Services





IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c.P. 8 as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28, respecting the **Retirement Plan for the Employees of Maysfield Property Management (1987) Inc., Registration No. C-103046;**

TO: Superintendent of  
Financial Services  
Financial Services  
Commission of Ontario  
5160 Yonge Street, 17th Floor  
North York, ON  
M2N 6L9

Attention: Larry Falconer  
Coordinator, Insolvencies  
**Administrator of the  
Retirement Plan for the  
Employees of Maysfield  
Property Management  
(1987) Inc.**

AND TO: Maysfield Property  
Management (1987) Inc.  
1200 Sheppard Avenue East  
Lower Level  
Willowdale, ON  
M2K 2K2

Attention: C.A. Ewing  
Vice-President  
**Employer**

#### **Notice of Proposal to Make an Order**

I PROPOSE TO ORDER that the **Retirement Plan for the Employees of Maysfield Property**

**Management (1987) Inc., Registration No. C-103046**, be wound up in part in respect of Divisions 469 and 830 of Maysfield Property Management (1987) Inc., effective November 30, 1992.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O.1990, c.P 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S. O. 1997, c. 28 (the "Act").

#### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations.

**YOU** are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served upon you, you deliver to the Tribunal a written notice that you require a hearing. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 28th day of April, 2000.

Dina Palozzi  
Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act*  
R.S.O. 1990, c. P.8, as amended;

AND IN THE MATTER OF a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c.P.8, as amended,  
respecting the **Pension Plan for the Employees  
of Maysfield Property Management Inc.,  
Registration No. 433961 (previously C-16628);**

TO: Superintendent of  
Financial Services  
Financial Services  
Commission of Ontario  
5160 Yonge Street, 17th Floor  
Toronto, ON M2N 6L9

Attention: Larry Falconer  
Coordinator, Insolvencies  
**Administrator**

AND TO: Maysfield Property  
Management Inc.  
1200 Sheppard Avenue East  
Toronto, ON M2K 2R2

Attention: R.L. Strom  
President  
**Employer**

#### **Notice of Proposal to Make an Order**

I PROPOSE TO ORDER that the **Pension Plan  
for the Employees of Maysfield Property  
Management Inc., Registration No. 433961  
(previously C-16628)**, be wound up in whole  
effective December 31, 1987.

I propose to make this order pursuant to sub-  
section 69(1) of the *Pension Benefits Act*, R.S.O.  
1990, c.P.8, as amended (the "Act").

#### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASON:**

1. There was a cessation or suspension of  
employer contributions to the pension fund.

YOU are entitled to a hearing by the Financial  
Services Tribunal (the "Tribunal") pursuant to  
subsection 89(6) of the *Act*, if, within thirty  
(30) days after this Notice of Proposal is served  
on you, you deliver to the Tribunal a written  
notice that you require a hearing. Any notice  
requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRI-  
BUNAL, WITHIN THIRTY (30) DAYS FROM  
THE DATE THIS NOTICE OF PROPOSAL IS  
SERVED ON YOU, A WRITTEN NOTICE  
THAT YOU REQUIRE A HEARING, I MAY  
MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario this 10th day of  
May, 2000.

Dina Palozzi  
Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act*  
R.S.O. 1990, c. P. 8, as amended;

AND IN THE MATTER OF a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P. 8, as amended  
respecting the **Retirement Benefit Plan for the  
Employees of Norman Wade Company  
Limited, Techniprint Services Limited and  
Norman Wade Management Ltd.,**  
**Registration No. 315176;**

TO: Arthur Andersen Inc.  
Toronto Dominion Centre  
1900 – 79 Wellington Street West  
P.O. Box 29  
Toronto, ON M5K 1B9

Attention: Lawrence Contant  
**Administrator**

AND TO: Norman Wade Company Limited,  
Techniprint Services Limited and  
Norman Wade Management Ltd.  
75 Milner Avenue  
Scarborough, ON M1S 3R7

Attention: T. A. Ronaldson  
Vice-President, Finance and  
Corporate Secretary  
**Employer**

### **Notice of Proposal to Make an Order**

I PROPOSE TO ORDER that the **Retirement  
Benefit Plan for the Employees of Norman  
Wade Company Limited, Techniprint  
Services Limited and Norman Wade  
Management Ltd., Registration No. 315176,**  
be wound up in whole effective May 1, 1998.

I propose to make this order pursuant to sub-  
section 69(1) of the *Pension Benefits Act*, R.S.O.  
1990, c. P.8, as amended (the “Act”).

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension of  
employer contributions to the pension fund.
2. A significant number of members of the pen-  
sion plan ceased to be employed by the  
employer as a result of the discontinuance of  
all or part of the business of the employer or  
as a result of the reorganization of the busi-  
ness of the employer.
3. All or a significant portion of the business  
carried on by the employer at a specific loca-  
tion has been discontinued.

**YOU** are entitled to a hearing by the Financial  
Services Tribunal (the “Tribunal”) pursuant to  
subsection 89(6) of the *Act*, if, within thirty  
(30) days after this Notice of Proposal is served  
on you, you deliver to the Tribunal a written  
notice that you require a hearing. Any notice  
requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON M2N 6L9

Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRI-  
BUNAL, WITHIN THIRTY (30) DAYS FROM  
THE DATE OF THIS NOTICE OF PROPOSAL  
IS SERVED ON YOU, A WRITTEN NOTICE  
THAT YOU REQUIRE A HEARING, I MAY  
MAKE THE ORDER PROPOSED HEREIN.**

**THE ADMINISTRATOR IS REQUIRED**  
pursuant to subsection 89(5) of the *Act*, to  
transmit a copy of this Notice of Proposal to  
Make an Order to the following persons:



PricewaterhouseCoopers Inc.  
(formerly Coopers & Lybrand)  
145 King Street West  
Toronto, ON  
M5H 1V8

Attention: Mick Sheehan  
**Interim Receiver of Norman Wade  
Company Limited**

DATED at Toronto, Ontario, this 26th day of  
May, 2000.

Dina Palozzi  
Superintendent of Financial Services





IN THE MATTER OF the *Pension Benefits Act*  
R.S.O. 1990, c. P.8, as amended;

AND IN THE MATTER OF a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c.P.8, as amended,  
respecting the **Pension Plan for the  
Employees of Norman Wade Company  
Limited and Techniprint Services Limited,  
Registration No. 957316;**

TO: Imperial Life Assurance Company  
Desjardins Laurentian Life  
1 Complexe Desjardins  
South Tower, 21st Floor  
Montreal, PQ  
H5B 1E2

Attention: Mary Miniatakos  
Customer Service,  
Group Pension Dept.

**Administrator**

AND TO: Norman Wade Company Limited  
and Techniprint Services Limited  
75 Milner Avenue  
Scarborough, ON  
M1S 3R7

Attention: T.A. Ronaldson  
Vice-President, Finance and  
Corporate Secretary

**Employer**

### **Notice of Proposal to Make an Order**

**I PROPOSE TO ORDER** that the Pension Plan  
for the Employees of Norman Wade  
Company Limited and Techniprint Services  
Limited, Registration No. 957316, be wound  
up in whole effective May 1, 1998.

I propose to make this order pursuant to sub-  
section 69(1) of the *Pension Benefits Act*, R.S.O.  
1990, c.P.8, as amended (the "Act").

**I PROPOSE TO MAKE THIS ORDER FOR THE  
FOLLOWING REASONS:**

1. There was a cessation or suspension of  
employer contributions to the pension fund.
2. A significant number of members of the pen-  
sion plan ceased to be employed by the  
employer as a result of the discontinuance of  
all or part of the business of the employer or  
as a result of the reorganization of the busi-  
ness of the employer.

**YOU** are entitled to a hearing by the Financial  
Services Tribunal (the "Tribunal") pursuant to  
subsection 89(6) of the *Act*, if, within thirty  
(30) days after this Notice of Proposal is served  
on you, you deliver to the Tribunal a written  
notice that you require a hearing. Any notice  
requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON  
M2N 6L9

Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRI-  
BUNAL, WITHIN THIRTY (30) DAYS FROM  
THE DATE THIS NOTICE OF PROPOSAL IS  
SERVED ON YOU, A WRITTEN NOTICE  
THAT YOU REQUIRE A HEARING, I MAY  
MAKE THE ORDER PROPOSED HEREIN.**



**THE ADMINISTRATOR IS REQUIRED** pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons:

PricewaterhouseCoopers Inc.  
(formerly Coopers & Lybrand)  
145 King Street West  
Toronto, ON M5H 1V8  
Attention: Mick Sheehan

**Interim Receiver  
for Norman Wade  
Company Limited**

**DATED** at Toronto, Ontario this 1st day of June, 2000.

Dina Palozzi  
Superintendent of Financial Services



## Proposed Order and Reasons

### **Proposed Order:**

**I PROPOSE TO ORDER** the Board of Trustees for the Labourers' Pension Fund of Central and Eastern Canada (the "Board of Trustees"), pursuant to section 88 of the *Act*, to prepare and file a new report under section 14 of Regulation 909, R.R.O. 1990 (the "Regulation") with a valuation date of December 31, 1996 for the Labourers' Pension Fund of Central and Eastern Canada, Registration No. 0573188 (the "Plan"), within sixty (60) days from the date of my Order.

**I ALSO PROPOSE TO ORDER** the Board of Trustees, pursuant to section 88 of the *Act*, to prepare and file a new report under section 14 of the Regulation with a valuation date of December 31, 1997 for the Plan, within sixty (60) days from the date of my Order.

**I ALSO PROPOSE TO ORDER** the Board of Trustees, pursuant to section 88 of the *Act*, to prepare the new reports under section 14 of the Regulation for the Plan with valuation dates of December 31, 1996 and December 31, 1997 (collectively, the "New Reports") using the following assumptions or methods:

1. The New Reports shall set out if the Plan has a solvency deficiency and the amount of any solvency deficiency, both as at December 31, 1996 and as at December 31, 1997, in accordance with subsection 14(8) of the Regulation. Subsection 14(8) of the Regulation provides, in part, that:  
Each report under this section shall also set out, on the basis of a solvency valuation or the opinion of the person preparing and certifying the report,
  - (a) whether there is a solvency deficiency;

- (b) if there is a solvency deficiency, the amount of the solvency deficiency and the special payments required to liquidate it in accordance with section 5;
  - (c) whether the transfer ratio is less than one; and
  - (d) if the transfer ratio is less than one, the transfer ratio.

2. The person preparing the New Reports shall determine if the Plan has a solvency deficiency as at December 31, 1996 and as at December 31, 1997 in accordance with subsection 17(1) of the Regulation. Subsection 17(1) of the Regulation provides that:

To determine the existence of a solvency deficiency for the purposes of a report under section 3, 4, 13 or 14, a valuation shall be performed by the person preparing the report to determine the solvency liabilities of the plan and the solvency assets of the plan.

3. The solvency liabilities of the Plan as at December 31, 1996 and as at December 31, 1997 shall be determined in accordance with subsection 17(2) of the Regulation because the Plan is a multi-employer pension plan established pursuant to one or more collective agreements or a trust agreement, as described in subsection 17(2) of the Regulation. Subsection 17(2) of the Regulation prescribes certain requirements for determining the solvency liabilities of such pension plans, stating:

In determining the solvency liabilities for a multi-employer pension plan established pursuant to one or more collective agreements or a trust agreement or a pension plan that provides defined benefits where the obligation of an employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement,

the solvency liabilities shall be determined on the basis of the benefits structure set out in the plan at the date of the valuation without consideration of any provision for the possible reduction of such benefits.

4. Because the Plan is a multi-employer pension plan established pursuant to a collective agreement or a trust agreement, as described in subsection 6(1) of the Regulation, the actuary who prepares the New Reports shall comply with subsection 6(4) of the Regulation in respect of each report. Subsection 6(4) of the Regulation states:

In the case of a pension plan referred to in subsection (1), the actuary shall, as part of the report required under subsection 3(1) or section 13 or 14,

- (a) perform such tests as will demonstrate the sufficiency of the contributions required by the collective agreement or agreements to provide for the benefits set out in the plan without consideration of any provision for reduction of benefits set out in the plan; or
  - (b) where the contributions are not sufficient to provide the benefits under the plan, propose options available to the administrator of the pension plan that will have the result that the required contributions will be sufficient to provide the benefits under the plan.
5. The actuary who prepares the New Reports will only satisfy subsection 6(4)(a) of the Regulation if the contributions required by the collective agreement or agreements are sufficient to provide for the benefits set out in the plan without consideration of any provision for the reduction of benefits set out in the plan and based on a going concern valuation and on a solvency valuation.

The solvency valuation must be performed in accordance with subsections 17(1) and 17(2) of the Regulation.

6. The actuary who prepares the New Reports will only satisfy subsection 6(4)(b) of the Regulation if the options proposed thereunder will have the result that the required contributions will be sufficient to provide the benefits under the plan without consideration of any provision for the reduction of benefits set out in the plan and based on a going concern valuation and on a solvency valuation. The solvency valuation must be performed in accordance with subsections 17(1) and 17(2) of the Regulation.

7. The New Reports shall demonstrate that the Plan complies with subsection 55(1) of the *Act*. Subsection 55(1) of the *Act* states:

A pension plan is not eligible for registration unless it provides for funding sufficient to provide the pension benefits, ancillary benefits and other benefits under the pension plan in accordance with this *Act* and the regulations.

8. The New Reports shall be prepared in accordance with subsection 15(1) of the Regulation which requires that an actuary prepare the reports and certificates referred to in section 14 of the Regulation. "Actuary" is defined in subsection 1(2) of the Regulation as meaning, "a Fellow of the Canadian Institute of Actuaries".
9. The actuary who prepares the New Reports shall comply with section 16 of the Regulation. Section 16 of the Regulation provides, in part, as follows:
  - (1) An actuary preparing a report under section 3, 5.3, 13 or 14 of this Regulation or section 70 of the *Act* shall use





assumptions appropriate for the plan and methods consistent with sound principles established by precedent or by common usage within the actuarial profession and with the requirements of the *Act* and this Regulation.

- (3) The person preparing a report referred to in subsection (1) or (2) shall certify that it meets the requirements of subsection (1) or (2), as the case may be.

10. The actuary who prepares the New Reports shall use assumptions and methods that are appropriate for a pension plan.
11. The actuary who prepares the New Reports shall prepare each in accordance with generally accepted actuarial principles.
12. The actuary who prepares the New Reports shall prepare each in accordance with the requirements and qualifications of the *Act*, Regulation, and Plan.

#### **I Propose to Make this Order for the Following Reasons**

13. Section 14 of the Regulation prescribes the information that is to be included in a report required under section 14 of the Regulation. Subsection 14(8) of the Regulation requires that a report under section 14 of the Regulation set out if the pension plan has a solvency deficiency and the amount of any solvency deficiency, providing, in part, as follows:

Each report under this section shall also set out, on the basis of a solvency valuation or the opinion of the person preparing and certifying the report,

- (a) whether there is solvency deficiency;
- (b) if there is solvency deficiency, the amount of the solvency deficiency and

the special payments required to liquidate it in accordance with section 5;

- (f) whether the transfer ratio is less than one; and
- (g) if the transfer ratio is less than one, the transfer ratio.

14. Section 17 of the Regulation prescribes the criteria for determining if a pension plan has a solvency deficiency for the purpose of a report under section 14 of the Regulation. Subsection 17(1) of the Regulation provides that:

To determine the existence of a solvency deficiency for the purposes of a report under section 3, 4, 13 or 14, a valuation shall be performed by the person preparing the report to determine the solvency liabilities of the plan and the solvency assets of the plan.

15. The Plan is a multi-employer pension plan established pursuant to one or more collective agreements or a trust agreement, as described in subsection 17(2) of the Regulation. Subsection 17(2) of the Regulation prescribes certain requirements for determining the solvency liabilities of such pension plans, stating:

In determining the solvency liabilities for a multi-employer pension plan established pursuant to one or more collective agreements or a trust agreement or a pension plan that provides defined benefits where the obligation of an employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement, the solvency liabilities shall be determined on the basis of the benefits structure set out in the plan as at the date of the valuation without consideration of any provision for the possible reduction of such benefits.



16. The Plan is a multi-employer pension plan established pursuant to a collective agreement or a trust agreement, as described in subsection 6(1) of the Regulation. Subsection 6(4) of the Regulation prescribes additional requirements for reports under section 14 of the Regulation for such pension plans, stating that:
- In the case of a pension plan referred to in subsection (1), the actuary shall, as part of the report required under subsection 3(1) or section 13 or 14,
- (a) perform such tests as will demonstrate the sufficiency of the contributions required by the collective agreement or agreements to provide for the benefits set out in the plan without consideration of any provision for reduction of benefits set out in the plan; or
  - (b) where the contributions are not sufficient to provide the benefits under the plan, propose options available to the administrator of the plan that will have the result that the required contributions will be sufficient to provide the benefits under the plan.
17. To satisfy subsection 6(4)(a) of the Regulation, the actuary who prepares the report under section 14 of the Regulation must perform such tests as will demonstrate the sufficiency of the contributions required by the collective agreement or agreements to provide for the benefits set out in the plan without consideration of any provision for the reduction of benefits set out in the plan and based on a going concern valuation and on a solvency valuation. The solvency valuation shall be performed in accordance with subsections 17(1) and 17(2) of the Regulation.
18. To satisfy subsection 6(4)(b) of the Regulation, the actuary who prepares the report under section 14 of the Regulation must propose options available to the administrator of the plan that will result in the required contributions being sufficient to provide the benefits under the plan without consideration of any provision for the reduction of benefits set out in the plan and based on a going concern valuation and on a solvency valuation. The solvency valuation shall be performed in accordance with subsections 17(1) and 17(2) of the Regulation.
19. Subsection 55(1) of the *Act* requires that all pension plans provide for funding sufficient to provide the pension benefits, ancillary benefits and other benefits under the pension plan in accordance with the *Act* and Regulation, stating that:
- A pension plan is not eligible for registration unless it provides for funding sufficient to provide the pension benefits, ancillary benefits and other benefits under the pension plan in accordance with this *Act* and the regulations.
20. Subsection 16(1) of the Regulation requires that an actuary preparing a report under section 14 of the Regulation use assumptions appropriate for the pension plan and methods consistent with sound principles established by precedent or by common usage within the actuarial profession and with the requirements of the *Act* and the Regulation.
21. Subsection 88(2)(a) of the *Act* provides that the Superintendent may make an order under section 88 of the *Act* where the Superintendent is of the opinion that the assumptions or methods used in the preparation of a report required under the *Act* or



the Regulation in respect of a pension plan are inappropriate for a pension plan.

22. The reports under section 14 of the Regulation with valuation dates of December 31, 1996 and December 31, 1997 for the Plan, prepared by Buck Consultants Limited and filed in June of 1997 and August of 1998, respectively, do not comply with subsections 6(4), 14(8), 16(1), 17(1), and 17(2) of the Regulation and subsection 55(1) of the *Act*. As such, the assumptions and methods used in the preparation of these reports are inappropriate for the Plan, within the meaning of subsection 88(2)(a) of the *Act*.
23. Subsection 88(2)(b) of the *Act* provides that the Superintendent may make an order under section 88 of the *Act* where the Superintendent is of the opinion that the assumptions or methods used in the preparation of the report required under the *Act* or the Regulation in respect of a pension plan do not accord with generally accepted actuarial principles.
24. The reports under section 14 of the Regulation with valuation dates of December 31, 1996 and December 31, 1997 for the Plan, prepared by Buck Consultants Limited and filed in June of 1997 and August of 1998, respectively, do not comply with subsections 6(4), 14(8), 16(1), 17(1), and 17(2) of the Regulation and subsection 55(1) of the *Act*. As such, the assumptions and methods used in the preparation of these reports do not accord with generally accepted actuarial principles, within the meaning of subsection 88(2)(b) of the *Act*.
25. Subsection 88(2)(c) provides that the Superintendent may make an order under section 88 of the *Act* where the Superintendent is of the opinion that a report submitted in respect of a pension plan does not meet the requirements and qualifications of the *Act*, the Regulation or the pension plan.
26. The reports under section 14 of the Regulation with valuation dates of December 31, 1996 and December 31, 1997 for the Plan, prepared by Buck Consultants Limited and filed in June of 1997 and August of 1998, respectively, do not comply with subsections 6(4), 14(8), 16(1), 17(1), and 17(2) of the Regulation and subsection 55(1) of the *Act*. As such, these reports do not meet the requirements and qualifications of the *Act* and the Regulation, within the meaning of subsection 88(2)(c) of the *Act*.
27. Subsection 88(1) of the *Act* provides that the Superintendent may, in the circumstances mentioned in subsection 88(2) of the *Act* and subject to section 89 of the *Act*, by order require an administrator to take the action specified in subsection 88(3) of the *Act*. Subsection 88(3) of the *Act* states:  
  
An order under this section may include, but is not limited to, requiring the preparation of a new report and specifying the assumptions or methods or both that shall be used in the preparation of the new report.
28. Such further and other grounds as may come to my attention.





## Orders that Pension Plans be Wound Up – Section 69 of the Pension Benefits Act

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28; (the *Act*)

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Hudson Bay Diecasting Limited Salaried Employees' Retirement Income Plan**, Registration No. 380170 (previously C-13417), dated the 21st day of January, 2000;

TO: Arthur Andersen Inc.  
1200 – 45 St. Clair Avenue West  
Toronto, ON  
M4V 3A7

Attention: David Kearney  
**Administrator of the Hudson Bay Diecasting Limited Salaried Employees' Retirement Income Plan**

AND TO: Hudson Bay Diecasting Limited  
230 Orenda Road  
Brampton, ON  
L6T 1E9

Attention: Dwight W. Rollins  
Chief Financial Officer  
**Employer**

### Order

ON or about January 26, 2000, I served a **Notice of Proposal to Make an Order** dated January 21, 2000, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the *Act*), on the Administrator and on the Employer to wind-up in whole the **Hudson Bay Diecasting Limited Salaried Employees' Retirement Income Plan**, Registration No. 380170 (previously C-13417) (the Plan).

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the Tribunal), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that the **Hudson Bay Diecasting Limited Salaried Employees' Retirement Income Plan**, Registration No. 380170 (previously C-13417) be wound up in whole, effective September 7, 1995, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by this *Act* or the regulations.
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
4. A significant number of members of the plan ceased to be employed by the employer as the result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the business of the employer.





**PURSUANT TO** subsection 69(2) of the *Act*, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Price Waterhouse Limited  
Suite 1100  
One Robert Speck Parkway  
Mississauga, ON  
L4Z 3M3

Attention: Andrew Wilczynski  
Senior Vice-President  
**Trustee in Bankruptcy**

A. John Page & Associates Inc.  
347 Bay Street  
Suite 1203  
Toronto, ON  
M5H 2R7

Attention: Mr. John Page  
**Agent of National Bank of Canada**

**DATED** at Toronto, Ontario this 30th day of March, 2000.

K. David Gordon  
Director, Pension Plans Branch  
by Delegated Authority from  
Dina Palozzi  
Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28; (the *Act*)

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Retirement Plan for Management Employees of Zettel Metalcraft Ltd., Registration No. 0536912 (formerly C-14794)**, dated the 8th day of February, 2000

**TO:** Deloitte & Touche Inc.  
Suite 1400  
BCE Place  
181 Bay Street  
Toronto, ON  
M5J 2V1

**Attention:** Bruce Bando  
Senior Vice-President  
**Administrator of the Retirement Plan for Management Employees of Zettel Metalcraft Ltd.**

**AND TO:** Zettel Metalcraft  
PO Box 70  
Aurora Stn. Main  
95 Cousins Drive  
Aurora, ON  
L4G 3H1

**Attention:** Tim Daly  
Controller  
**Employer**

### **Order**

**ON** the 14th day of February, 2000, I issued a **Notice of Proposal to Make an Order** dated the 8th day of February, 2000, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997,

c. 28 (the *Act*), to the Administrator and to the Employer to wind-up in whole the **Retirement Plan for Management Employees of Zettel Metalcraft Ltd., Registration No. 0536912 (formerly C-14794)** (the Plan).

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal, (the Tribunal), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

**IT IS THEREFORE HEREBY ORDERED** that the Plan be wound up in whole for those members and former members of the Plan who ceased to be employed by the Employer effective between January 1, 1995 and February 6, 1997, for the following reason:

1. A significant number of members of the plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.

**PURSUANT TO** subsection 69(2) of the *Act*, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Ernest Leyshon-Hughes  
7 Duke Street West  
Suite 204  
Kitchener, ON  
N2H 6M7

**Attention:** Ernest Leyshon-Hughes  
**Trustee in Bankruptcy**

**DATED** at Toronto, Ontario this 31st day of March, 2000.

K. David Gordon  
Director, Pension Plans Branch  
by Delegated Authority from  
Dina Palozzi  
Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended;

**AND IN THE MATTER OF** A Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P.8, as amended,  
respecting the **Pension Plan for the  
Employees of Norman Wade Company  
Limited and Techniprint Services Limited,**  
**Registration No. 957316**, dated the 1st day of  
June, 2000;

**TO:** Imperial Life Assurance Company  
Desjardins Laurentian Life  
1 Complexe Desjardins  
South Tower, 21st Floor  
Montreal, PQ H5B 1E2

**Attention:** Mary Miniatakos  
Customer Service, Group  
Pension Dept.

**Administrator**

**AND TO:** Norman Wade Company Limited  
and Techniprint Services Limited  
75 Milner Avenue  
Scarborough, ON M1S 3R7

**Attention:** T.A. Ronaldson  
Vice-President, Finance and  
Corporate Secretary

**Employer**

### **Order**

ON the 8th day of June, 2000, I issued a **Notice of Proposal to Make an Order** dated the 1st day of June, 2000, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*"), to the Administrator and to the Employer to wind-up in whole the **Pension Plan for the Employees of Norman Wade Company Limited and Techniprint Services Limited, Registration No. 957316.**

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal, (the "*Tribunal*"), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

**IT IS THEREFORE HEREBY ORDERED** that the **Pension Plan for the Employees of Norman Wade Company Limited and Techniprint Services Limited, Registration No. 957316** be wound up in whole, effective May 1, 1998, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.

**PURSUANT TO** subsection 69(2) of the *Act*, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

PricewaterhouseCoopers Inc.  
(formerly Coopers & Lybrand)  
145 King Street West  
Toronto, ON M5H 1V8

**Attention:** Mick Sheehan

**Interim Receiver for Norman  
Wade Company Limited**

**DATED** at North York, Ontario, this 8th day of June, 2000.

K. David Gordon  
Director, Pension Plans Branch  
by Delegated Authority from  
Dina Palozzi  
Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8; as amended;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make an  
Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P.8, as amended,  
respecting the **Pension Plan for the Employees  
of Mechron Power Systems Inc./Société  
Génératrice Mechron Inc., Registration No.  
278051**, dated the 25th day of April, 2000;

**TO:** The Standard Life  
Assurance Company  
1245 Sherbrooke Street West  
Montreal, Quebec H3G 1G3

**Attention:** Jean-Claude Lebel, A.S.A.  
Actuarial Assistant  
**Administrator of the Pension  
Plan for the Employees of  
Mechron Power Systems Inc./  
Société Génératrice Mechron Inc.**

**AND TO:** Mechron Power Systems Inc./  
Société Génératrice Mechron Inc.  
2437 Kaladar Avenue  
Ottawa, ON K1V 8B9

**Attention:** Marco Campagna  
V.P. Finance  
**Employer**

### **Order**

ON the 2nd day of May, 2000, I issued a **Notice  
of Proposal to make an Order** dated the 25th  
day of April, 2000, pursuant to subsection 69(1)  
of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as  
amended (the "Act"), to the Administrator and  
to the Employer to wind-up in whole the  
**Pension Plan for the Employees of Mechron  
Power Systems Inc./Société Génératrice  
Mechron Inc., Registration No. 278051.**

**NO** Notice requiring a hearing was delivered to  
the Financial Services Tribunal, (the "Tribunal"),  
by the Administrator and/or the Employer with-  
in the time prescribed by subsection 89(6) of  
the *Act*.

**IT IS THEREFORE HEREBY ORDERED** that  
the Pension Plan for the Employees of Mechron  
Power Systems Inc./Société Génératrice Mechron  
Inc., Registration No. 278051 be wound up in  
whole, effective October 1, 1997, for the fol-  
lowing reason:

1. There was a cessation or suspension of  
employer contributions to the pension fund.

**PURSUANT TO** subsection 69(2) of the *Act*, the  
Administrator is required to give notice of this  
Order to the following persons by transmitting  
a copy hereof:

KPMG Inc.  
45 O'Connor Street, Suite 1000  
Ottawa, ON K1P 1A4  
Attention: James L. McCaw

### **Receiver and Manager**

**DATED** at Toronto, Ontario this 22nd day of  
June, 2000.

K. David Gordon  
Director, Pension Plans Branch  
by Delegated Authority from  
Dina Palozzi  
Superintendent of Financial Services





IN THE MATTER OF the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8; as amended;

AND IN THE MATTER OF a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the  
*Pension Benefits Act*, R.S.O. 1990, c. P.8, as  
amended, respecting **The Revised Pension  
Plan for the Employees of Forum Sport Inc.,  
Registration No. 0587329**, dated the 25th day  
of April, 2000;

TO: Clarica (formerly Mutual Life  
of Canada)

227 King Street South  
Waterloo, ON N2J 4C5

Attention: Ms. Donna Belyea  
Canadian Customer Business Unit  
**Administrator of The Revised  
Pension Plan for the Employees  
of Forum Sport Inc.**

AND TO: Forum Sport Inc.  
23 Victoria Road North  
Guelph, ON N1E 5G6

Attention: Mr. D.E. Jacket  
Plan Administrator  
**Employer**

### **Order**

ON the 2nd day of May, 2000, I issued a Notice  
of Proposal to make an Order dated the 25th  
day of April, pursuant to subsection 69(1) of  
the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as  
amended (the "Act"), to the Administrator and  
to the Employer to wind-up in whole **The  
Revised Pension Plan for the Employees of  
Forum Sport Inc., Registration No. 0587329**.

NO Notice requiring a hearing was delivered to  
the Financial Services Tribunal, (the "Tribunal"),  
by the Administrator and/or the Employer  
within the time prescribed by subsection 89(6)

of the Act.

**IT IS THEREFORE HEREBY ORDERED** that  
The Revised Pension Plan for the Employees of  
Forum Sport Inc., Registration No. 0587329 be  
wound up in whole, effective December 31,  
1994, for the following reasons:

1. There was a cessation or suspension of  
employer contributions to the pension fund.
2. A significant number of members of the plan  
ceased to be employed by the employer as a  
result of the discontinuance of all or part of  
the business of the employer or as a result of  
the reorganization of the business of the  
employer.

**DATED** at Toronto, Ontario this 22nd day of  
June, 2000.

K. David Gordon  
Director, Pension Plans Branch  
by Delegated Authority from  
Dina Palozzi  
Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8; as amended;

AND IN THE MATTER OF a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P.8, as amended,  
respecting the **Zettel Metalcraft Ltd. Local 396  
CAW Pension Plan, Registration No. 0933515  
(previously C-100371)**, dated the 10th day of  
April, 2000;

TO: Deloitte & Touche Inc.  
Suite 1400  
BCE Place  
181 Bay Street  
Toronto, ON M5J 2V1

Attention: Bruce Bando  
Senior Vice-President  
Administrator of the  
Zettel Metalcraft Ltd.  
Local 396 CAW Pension Plan

AND TO: Zettel Metalcraft Ltd.  
PO Box 70 Aurora Stn Main  
95 Cousins Drive  
Aurora, ON L4G 3H1

Attention: Tim Daly  
Controller  
Employer

### **Order**

ON the 11th day of April, 2000, I issued a  
Notice of Proposal to make an Order dated the  
10th day of April, 2000, pursuant to subsection  
69(1) of the *Pension Benefits Act*, R.S.O. 1990,  
c. P.8, as amended (the "Act"), to the  
Administrator and to the Employer to wind-up  
in whole the **Zettel Metalcraft Ltd. Local 396  
CAW Pension Plan, Registration No. 0933515  
(previously C-100371)**.

NO Notice requiring a hearing was delivered to  
the Financial Services Tribunal, (the "Tribunal"),

by the Administrator and/or the Employer within  
the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that the  
**Zettel Metalcraft Ltd. Local 396 CAW Pension  
Plan, Registration No. 0933515 (previously  
C-100371)** be wound up in whole, effective  
January 24, 1997, for the following reasons:

1. There was a cessation or suspension of  
employer contributions to the pension fund.
2. A significant number of members of the pen-  
sion plan ceased to be employed by the  
employer as a result of the discontinuance of  
all or part of the business of the employer or  
as a result of the reorganization of the busi-  
ness of the employer.

PURSUANT TO subsection 69(2) of the *Act*,  
the Administrator is required to give notice  
of this Order to the following persons by  
transmitting a copy hereof:

National Automobile, Aerospace  
and Agricultural Implement  
Workers Union of Canada  
(CAW-Canada) and its Local 396  
P.O. Box 112  
Aurora, ON L4G 3H1  
Union

Ernest Leyshon-Hughes  
7 Duke Street West  
Suite 204  
Kitchener, ON N2H 6M7

Attention: Ernest Leyshon-Hughes  
**Trustee in Bankruptcy**

DATED at Toronto, Ontario this 26th day of  
June, 2000.

K. David Gordon  
Director, Pension Plans Branch  
by Delegated Authority from  
Dina Palozzi  
Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act*  
R.S.O. 1990, c. P. 8, as amended by the  
*Financial Services Commission of Ontario Act*,  
1997, S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c.P.8, as amended by  
the *Financial Services Commission of Ontario  
Act*, 1997, S.O.1997, c. 28, respecting the  
**FBI Brands Ltd. – Les Marques FBI Ltée &  
Designated Affiliated and Subsidiary  
Companies Pension Plan, Registration  
No. 951996.**

**TO:** Buck Consultants  
P. O. Box 15, Suite 1500  
95 Wellington Street West  
Toronto, ON  
M5J 2N7

**Attention:** Ms. Wafaa Babcock  
Consulting Actuary  
**Administrator of the FBI Brands  
Ltd. – Les Marques FBI Ltée  
& Designated Affiliated and  
Subsidiary Companies  
Pension Plan**

**AND TO:** FBI Brands Ltd. –  
Les Marques FBI Ltée  
Suite 301  
6700 Côte de Liesse  
Ville St-Laurent PQ  
H4T 2B5

**Attention:** Mr. Anthony Tondino  
Chief Financial Officer  
**Employer**

### **Order**

**ON** the 3rd day of May, 2000, I issued a **Notice of Proposal to make an Order**, dated the 28th day of April, 2000, pursuant to subsection 69 (1) of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, (hereinafter both referred to collectively as the “*Act*”) to the Administrator and the Employer to wind-up in whole the **FBI Brands Ltd. – Les Marques FBI Ltée & Designated Affiliated and Subsidiary Companies Pension Plan, Registration No. 951996 effective October 22, 1998.**

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal, (the “Tribunal”), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

**IT IS THEREFORE HEREBY ORDERED** that the **FBI Brands Ltd. – Les Marques FBI Ltée & Designated Affiliated and Subsidiary Companies Pension Plan, Registration No. 951996** be wound up in whole, effective October 22, 1998, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund; and
2. the employer failed to make contributions to the pension fund as required by the *Act* or the regulations.

**PURSUANT TO SUBSECTION 69(2)** of the *Act*, the Administrator is required to give notice of this order to the following persons by transmitting a copy thereof:

United Food & Commercial Workers  
Union, Local 175  
20 Hamilton Avenue  
Ottawa, ON  
K1Y 1B6



Attention: Mr. Ray Bromley  
Union Representative  
**Union**

KMPG Inc.  
P.O. Box 976  
Suite 700  
21 King St. W.  
Hamilton, ON  
L8N 3R1

Attention: Mr. Brad Newton  
Senior Manager  
**Receiver and Trustee  
in bankruptcy**

**DATED** at Toronto, Ontario this 28th day of  
June, 2000.

K. David Gordon, Director  
Pension Plans Branch  
by Delegated Authority from  
Dina Palozzi  
Superintendent of Financial Services





IN THE MATTER OF the *Pension Benefits Act*,  
R.S.O. 1990, c. P. 8, as amended;

AND IN THE MATTER OF a Proposal of the  
Superintendent of Financial Services to Make an  
Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P. 8, as amended,  
respecting the **Pension Plan for the Employees  
of Maysfield Property Management Inc.,  
Registration No.433961 (previously C-16628);**

TO: Superintendent of  
Financial Services  
Financial Services  
Commission of Ontario  
5160 Yonge Street, 17th Floor  
North York, ON M2N 6L9

Attention: Larry Falconer  
Coordinator, Insolvencies  
**Administrator**

AND TO: Maysfield Property  
Management Inc.  
1200 Sheppard Avenue East  
Toronto ON, M2K 2R2

Attention: R. L. Strom  
President  
**Employer**

"Tribunal"), by the Administrator and/or the  
Employer within the time prescribed by  
subsection 89(6) of the *Act*.

**IT IS THEREFORE HEREBY ORDERED** that  
the **Pension Plan for the Employees of  
Maysfield Property Management Inc.,  
Registration No. 433961 (previously C-16628)**  
be wound up in whole, effective December 31,  
1987, for the following reason:

1. There was a cessation or suspension of  
employer contributions to the pension fund;  
and the employer failed to make contribu-  
tions to the pension fund as required by  
the *Act* or the regulations.

**DATED** at Toronto, Ontario, this 28th day of  
June, 2000.

K. David Gordon, Director  
Pension Plans Branch

by Delegated Authority from

Dina Palozzi

Superintendent of Financial Services

### Order

ON the 11th day of May, 2000, I issued a  
**Notice of Proposal to Make an Order**, dated  
the 10th day of May, 2000, pursuant to subsec-  
tion 69 (1) of the *Pension Benefits Act*, R.S.O.  
1990, c. P. 8, as amended by the "*Act*" to the  
Administrator and the Employer to wind-up in  
whole the **Pension Plan for the Employees  
of Maysfield Property Management Inc.,  
Registration No. 433961 (previously C-16628)**  
effective December 31, 1987.

NO Notice requiring a hearing was delivered  
to the Financial Services Tribunal, (the



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P.8, as amended,  
respecting the **Retirement Plan for the  
Employees of Maysfield Property  
Management (1987) Inc., Registration No.  
C-103046**, dated the 28th day of April, 2000;

**TO:** Superintendent of  
Financial Services  
Financial Services  
Commission of Ontario  
5160 Yonge Street, 17th Floor  
North York, ON M2N 6L9

**Attention:** Larry Falconer  
Coordinator, Insolvencies  
**Administrator**

**AND TO:** Maysfield Property  
Management (1987) Inc.  
1200 Sheppard Avenue East  
Lower Level  
Willowdale, ON M2K 2K2

**Attention:** C.A. Ewing  
Vice-President  
**Employer**

### **Order**

ON the 3rd day of May, 2000, I issued a **Notice  
of Proposal to Make an Order** dated the 28th  
day of April, 2000, pursuant to subsection 69(1)  
of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as  
amended (the "Act"), to the Administrator and  
to the Employer to wind-up in part the  
**Retirement Plan for the Employees of  
Maysfield Property Management (1987) Inc.,  
Registration No. C-103046**.

**NO** Notice requiring a hearing was delivered to  
the Financial Services Tribunal, (the "Tribunal"),  
by the Administrator and/or the Employer with-  
in the time prescribed by subsection 89(6) of  
the Act.

**IT IS THEREFORE HEREBY ORDERED** that  
the **Retirement Plan for the Employees of  
Maysfield Property Management (1987) Inc.,  
Registration No. C-103046** be wound up in  
part in respect of Division 777 of Maysfield  
Property Management (1987) Inc., effective  
December 31, 1991 for the following reasons:

1. There was a cessation or suspension of  
employer contributions to the pension fund.
2. The employer failed to make contributions  
to the pension fund as required by the Act or  
the regulations.

**DATED** at Toronto, Ontario this 4th day of  
July, 2000.

K. David Gordon  
Director, Pension Plans Branch  
by Delegated Authority from  
Dina Palozzi  
Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended;

AND IN THE MATTER OF a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P.8, as amended,  
respecting the **Retirement Plan for the  
Employees of Maysfield Property  
Management (1987) Inc., Registration No.  
C-103046, dated the 28th day of April, 2000;**

TO: Superintendent of  
Financial Services  
Financial Services Commission of  
Ontario  
5160 Yonge Street, 17th Floor  
North York, ON M2N 6L9

Attention: Larry Falconer  
Coordinator, Insolvencies  
**Administrator**

AND TO: Maysfield Property Management  
(1987) Inc.  
1200 Sheppard Avenue East  
Lower Level  
Willowdale, ON M2K 2K2

Attention: C.A. Ewing  
Vice-President  
**Employer**

the Financial Services Tribunal, (the "Tribunal"),  
by the Administrator and/or the Employer with-  
in the time prescribed by subsection 89(6) of  
the *Act*.

IT IS THEREFORE HEREBY ORDERED that  
the **Retirement Plan for the Employees of  
Maysfield Property Management (1987) Inc.,  
Registration No. C-103046** be wound up in  
part in respect of Divisions 469 and 830 of  
Maysfield Property Management (1987) Inc.,  
effective November 30, 1992, for the following  
reasons:

1. There was a cessation or suspension of  
employer contributions to the pension fund.
2. The employer failed to make contributions  
to the pension fund as required by the *Act* or  
the regulations.

**DATED** at Toronto, Ontario this 4th day of  
July, 2000.

K. David Gordon  
Director, Pension Plans Branch  
by Delegated Authority from  
Dina Palozzi  
Superintendent of Financial Services

## Order

ON the 3rd day of May, 2000, I issued a **Notice  
of Proposal to make an Order** dated the 28th  
day of April, 2000 pursuant to subsection 69(1)  
of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as  
amended (the "*Act*"), to the Administrator and  
to the Employer to wind-up in part the  
**Retirement Plan for the Employees of  
Maysfield Property Management (1987) Inc.,  
Registration No. C-103046.**

NO Notice requiring a hearing was delivered to



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P.8, as amended,  
respecting the **Retirement Plan for the  
Employees of Maysfield Property  
Management (1987) Inc., Registration No.  
C-103046**, dated the 28th day of April, 2000;

**TO:** Superintendent of  
Financial Services  
Financial Services  
Commission of Ontario  
5160 Yonge Street, 17th Floor  
North York, ON M2N 6L9

**Attention:** Larry Falconer  
Coordinator, Insolvencies  
**Administrator**

**AND TO:** Maysfield Property  
Management (1987) Inc. ,  
1200 Sheppard Avenue East  
Lower Level  
Willowdale, ON M2K 2K2

**Attention:** C.A. Ewing  
Vice-President  
**Employer**

**NO** Notice requiring a hearing was delivered  
to the Financial Services Tribunal, (the  
"Tribunal"), by the Administrator and/or  
the Employer within the time prescribed by  
subsection 89(6) of the *Act*.

**IT IS THEREFORE HEREBY ORDERED** that  
the Retirement Plan for the Employees of  
Maysfield Property Management (1987) Inc.,  
Registration No. C-103046 be wound up in  
whole, effective December 31, 1992, for the fol-  
lowing reasons:

1. There was a cessation or suspension of  
employer contributions to the pension fund.
2. The employer failed to make contributions  
to the pension fund as required by the *Act*  
or the regulations.

**DATED** at Toronto, Ontario this 4th day of  
July, 2000.

K. David Gordon  
Director, Pension Plans Branch  
by Delegated Authority from  
Dina Palozzi  
Superintendent of Financial Services

### **Order**

ON the 3rd day of May, 2000, I issued a **Notice  
of Proposal to Make an Order** dated the 28th  
day of April, 2000, pursuant to subsection 69(1)  
of the *Pension Benefits Act*, R.S.O. 1990, c. P.8,  
as amended (the "*Act*"), to the Administrator  
and to the Employer to wind-up in whole the  
**Retirement Plan for the Employees of  
Maysfield Property Management (1987) Inc.,  
Registration No. C-103046**.





IN THE MATTER OF the *Pension Benefits Act*,  
R.S.O. 1990, c.P.8, as amended;

AND IN THE MATTER OF a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c.P.8, as amended,  
respecting A **Group Pension Plan for the  
Employees of The Geo. Cluthé Mfg. Co. Ltd.**,  
Registration No. 235069 (formerly C-2490)

TO: The Equitable Life Insurance  
Company of Canada  
One Westmount Road, North  
Waterloo, Ontario  
N2J 4C7

Attention: Richard Denomme  
Manager, Annuity and  
Pension Services  
**Administrator of A Group  
Pension Plan for the Employees  
of The Geo. Cluthé Mfg. Co. Ltd.**

AND TO: The Geo. Cluthé Mfg. Co. Ltd.  
P.O. Box 1635  
Waterloo, Ontario  
N2J 3Z7

Attention: Graham Poll  
Controller  
**Employer**  
Cluthé Industries  
P.O. Box 1635  
Waterloo, Ontario  
N2J 3Z7

Attention: Graham Poll  
Controller  
**Employer**

### **Order**

ON the 8th day of May, 2000, I issued a **Notice  
of Proposal to Make an Order** dated the 3rd  
day of May, 2000, pursuant to subsection 69(1)  
of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as  
amended (the "Act"), to the Administrator and  
to the Employer to wind-up in whole A **Group  
Pension Plan for the Employees of The Geo.  
Cluthé Mfg. Co. Ltd.**, Registration No.  
235069 (formerly C-2490).

NO Notice requiring a hearing was delivered to  
the Financial Services Tribunal (the "Tribunal")  
by the Administrator and/or the Employer  
within the time prescribed by subsection 89(6)  
of the *Act*.

IT IS THEREFORE HEREBY ORDERED that A  
**Group Pension Plan for the Employees of  
The Geo. Cluthé Mfg. Co. Ltd.**, Registration  
No. 253069 (formerly C02490) be wound up  
in whole, effective December 14, 1995, for the  
following reasons:

1. There was a cessation or suspension of  
employer contributions to the pension  
fund on or about December 14, 1995;
2. The employer has failed to make contribu-  
tions to the pension fund as required  
by the *Act* and the Regulations thereunder;
3. A significant number of members of the plan  
ceased to be employed by the employer as a  
result of the discontinuance of all or part of  
the business of the employer or as a result of  
the reorganization of the business of the  
employer;
4. All or a significant portion of the business  
carried on by the employer at a specific  
location has been discontinued.



PURSUANT TO subsection 69(2) of the *Act*, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Coopers & Lybrand Limited  
5 Columbia Street West  
Waterloo, Ontario  
N2L 5Z5

Attention: Wayne Brohman  
Vice-President  
**Receiver and Trustee  
in Bankruptcy**

DATED at Toronto, Ontario, this 4th day of  
July, 2000.

Dina Palozzi  
Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8; as amended;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P.8, as amended,  
respecting the **Retirement Benefit Plan for the  
Employees of Norman Wade Company  
Limited, Techniprint Services Limited and  
Norman Wade Management Ltd.,  
Registration No. 315176**, dated the 26th day  
of May, 2000;

**TO:** Arthur Andersen Inc.  
Toronto Dominion Centre  
1900 – 79 Wellington Street West  
P.O. Box 29  
Toronto, ON M5K 1B9

**Attention:** Lawrence Contant  
**Administrator**

**AND TO:** Norman Wade Company Limited,  
Techniprint Services Limited and  
Norman Wade Management Ltd.  
75 Milner Avenue  
Scarborough, ON M1S 3R7

**Attention:** T.A. Ronaldson  
Vice-President, Finance and  
Corporate Secretary  
**Employer**

### **Order**

**ON** the 30th day of May, 2000, I issued a  
**Notice of Proposal to make an Order** dated  
the 26th day of May, 2000, pursuant to subsec-  
tion 69(1) of the *Pension Benefits Act*, R.S.O.  
1990, c. P.8, as amended (the "*Act*"), to the  
Administrator and to the Employer to wind-up  
in whole the **Retirement Benefit Plan for the  
Employees of Norman Wade Company  
Limited, Techniprint Services Limited and  
Norman Wade Management Ltd.,  
Registration No. 315176**.

**NO** Notice requiring a hearing was delivered to  
the Financial Services Tribunal, (the "Tribunal"), by  
the Administrator and/or the Employer within the  
time prescribed by subsection 89(6) of the *Act*.

**IT IS THEREFORE HEREBY ORDERED** that the  
**Retirement Benefit Plan for the Employees of  
Norman Wade Company Limited,  
Techniprint Services Limited and Norman  
Wade Management Ltd., Registration No.  
315176** be wound up in whole, effective  
May 1, 1998, for the following reasons:

1. There was a cessation or suspension of  
employer contributions to the pension fund.
2. A significant number of members of the  
pension plan ceased to be employed by the  
employer as a result of the discontinuance of  
all or part of the business of the employer or  
as a result of the reorganization of the business  
of the employer.
3. All or a significant portion of the business  
carried on by the employer at a specific loca-  
tion was discontinued.

**PURSUANT TO** subsection 69(2) of the *Act*, the  
Administrator is required to give notice of this  
Order to the following persons by transmitting  
a copy hereof:

PriceWaterhouse Coopers Inc.  
(formerly Coopers & Lybrand)  
145 King Street West  
Toronto, ON M5H 1V8

**Attention:** Mick Sheehan  
**Interim Receiver and Receiver  
& Manager of Norman Wade  
Company Limited**

**DATED** at Toronto, Ontario this 20th day of  
July, 2000.

K. David Gordon  
Director, Pension Plans Branch  
By Delegated Authority from  
Dina Palozzi  
Superintendent of Financial Services



## Consents to Payments of Surplus out of Wound Up Pension Plans – Subsection 78 (1) of the PBA

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to subsection 78(1) of the *Act* consenting to payment out of the **Encyclopaedia Britannica Publications Ltd. And Associated Companies Retirement Pension Plan, Registration No. 0523951**

TO: Encyclopaedia Britannica Inc.  
310 South Michigan Avenue  
9th Floor  
Chicago, IL  
USA 60604

Attention: Ms. Andrea Toback  
Executive Director of Human  
Resources  
Applicant

### Consent

ON or about November 29, 1999, the Superintendent of Financial Services caused to be served on Encyclopaedia Britannica Inc., a **Notice of Proposal** dated November 25, 1999, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the **Encyclopaedia Britannica publications Ltd. And Associated Companies Retirement Pension Plan, Registration No. 0523951** (the Plan), to Encyclopaedia Britannica Publications Ltd. of 50% of the surplus remaining in the Plan (after adding 50% of the investment earnings on the surplus, to the date of payment and deducting 50% of the expenses relating to the wind-up of the Plan),

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the **Encyclopaedia Britannica Publications Ltd. And Associated Companies Retirement Pension Plan, Registration No. 0523951**, of 50% of the surplus remaining in the Plan, (after adding 50% of the investment earnings on the surplus, to the date of payment and deducting 50% of the expenses relating to the wind-up of the Plan), to Encyclopaedia Britannica Publications Ltd.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement made by the Applicant on behalf of Encyclopaedia Britannica Publications Ltd. and 91% of members, 80% of deferred former members and 89% of pensioners on the date of wind-up) and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at Toronto, Ontario this 13th day of January, 2000.

K. David Gordon  
Director, Pension Plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the *Act*);

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order pursuant to subsection 78(1) of the *Act* consenting to payment out of the **South Winds Sand & Gravel Limited Pension Trust Plan, Registration No. 415513**

**TO:** South Winds Sand & Gravel Limited  
c/o Mr. Jonathan Townsend  
Neal, Pallett & Townsend  
Chartered Accountants  
289 Dufferin Avenue  
London, ON  
N6B 1Z1

**Applicant and Employer**

**AND TO:** William A. Graham  
c/o South Winds Sand &  
Gravel Limited  
100 Enterprise Drive  
Unit 14  
Komoka, ON  
N0L 1R0  
**Member**

### **Consent**

ON or about November 29, 1999, the Superintendent of Financial Services caused to be served on South Winds Sand & Gravel Limited and William A. Graham, by first class mail a **Notice of Proposal** dated November 29, 1999, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the **South Winds Sand & Gravel Limited Pension Trust Plan, Registration No. 415513** (the Plan), to South Winds Sand & Gravel Limited of the surplus remaining in the

Plan. The surplus in the Plan (estimated as of October 31, 1995 to be \$81,202) is subject to adjustment for investment earnings to the date of payment less any expenses.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant and Employer or by the Member, within the time prescribed by subsection 89(6) of the *Act*.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the **South Winds Sand & Gravel Limited Pension Trust Plan, Registration No. 415513**, to South Winds Sand & Gravel Limited, of the surplus remaining in the Plan. The surplus in the Plan (estimated as of October 31, 1995, to be \$81,202) is subject to adjustment for investment earnings to the date of payment less any expenses.

**DATED** at Toronto, Ontario this 1st day of February, 2000.

K. David Gordon  
Director, Pension Plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to subsection 78(1) of the *Act* consenting to payment out of the **Pension Plan for the President of the Mining Association of Canada, Registration No. 0692053**

TO: The Mining Association of Canada  
1105 – 350 Sparks Street  
Ottawa, ON  
K1R 7S8

Attention: Ellen Slevin  
Director of Administration &  
Assistant Treasurer  
**Applicant and Employer**

### Consent

ON or about November 29, 1999, the Superintendent of Financial Services caused to be served on The Mining Association of Canada, by first class mail a **Notice of Proposal** dated November 25, 1999 to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the **Pension Plan for The President of The Mining Association of Canada, Registration No. 0692053** (the Plan), to The Mining Association of Canada, of the surplus remaining in the Plan. The surplus in the Plan (estimated as of December 31, 1997, to be \$15,515) is subject to adjustment for investment earnings or losses and expenses, to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant and Employer within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the **Pension Plan for The President of The Mining Association of Canada, Registration No. 0692053**, to The Mining Association of Canada, of the surplus remaining in the Plan. The surplus in the Plan (estimated as of December 31, 1997, to be \$15,515) is subject to adjustment for investment earnings or losses and expenses, to the date of payment.

DATED at Toronto, Ontario this 2nd day of February, 2000.

K. David Gordon  
Director, Pension Plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Pension Plan of Brady & Seidner Associates Ltd. for G. Brady, Registration No. 0956631**

TO: Brady & Seidner Associates Ltd. AND  
George Brady Investments Ltd.  
c/o William M. Mercer Limited  
BCE Place  
161 Bay Street  
PO Box 501  
Toronto, ON  
M5J 2S5

Attention: W.K. Simon  
**Applicants**

### **Consent**

ON or about January 21, 2000, the Superintendent of Financial Services caused to be served on Brady & Seidner Associates Ltd. and George Brady Investments Ltd., by first class registered mail, a **Notice of Proposal** dated January 18, 2000, to consent pursuant to subsection 78(1) of the *Act*, to the payment, out of the **Pension Plan of Brady & Seidner Associates Ltd. for G. Brady, Registration No. 0956631** (the Plan), to BRADY & SEIDNER ASSOCIATES LTD. and GEORGE BRADY INVESTMENTS LTD. (the "Applicants") of the surplus remaining in the Plan. The surplus in the Plan (estimated as of December 31, 1997, to be \$194,107) is subject to deduction for expenses associated with the wind-up of the Plan and this surplus application.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicants within the time prescribed by subsection 89(6) of the *Act*.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the **Pension Plan of Brady & Seidner Associates Ltd. for G. Brady, Registration No. 0956631**, to Brady & Seidner Associates Ltd. and George Brady Investments Ltd., of the surplus remaining in the Plan. The surplus in the Plan (estimated as of December 31, 1997, to be \$194,107) is subject to deduction for expenses associated with the wind-up of the Plan and this surplus application.

**DATED** at Toronto, Ontario this 9th day of March, 2000.

K. David Gordon  
Director, Pension Plans Branch  
by Delegated Authority from  
Dina Palozzi  
Superintendent of Financial Services



**IN THE MATTER OF** The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the *Act*);

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **United States Borax & Chemical Corporation Retirement Plan for Employees In Canada, Registration No. C-8789**

**TO:** U.S. Borax Inc.  
26877 Tourney Road  
Valencia, CA  
USA 91355-1847

Attention: Marcel Blais  
Vice President Human Resources  
**Applicant**

### **Consent**

ON or about January 18, 2000, the Superintendent of Financial Services caused to be served on U.S. Borax Inc. a **Notice of Proposal** dated January 18, 2000, to consent, pursuant to subsection 78(1) of the *Act*, to the payment of 78% of the net surplus remaining out of the **United States Borax & Chemical Corporation Retirement Plan for Employees In Canada, Registration No. C-8789** (the *Plan*), to U.S. Borax Inc. The surplus in the plan is estimated to be \$137,097 as of January 1, 1999 and is subject to adjustment for investment earnings or losses and expenses, to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment of 78% of the net surplus remaining out of the **United States Borax & Chemical Corporation Retirement Plan for Employees In Canada, Registration No. C-8789** to U.S. Borax Inc.

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies me that all benefits, including benefits pursuant to the surplus distribution agreement disclosed in the application payable to the members, former members and any other persons entitled to such payments have been paid, or otherwise provided for.

**DATED** at Toronto, Ontario, this 9th day of March, 2000.

K. David Gordon  
Director, Pension Plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services





IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **McCormick, Rankin & Associates Designated Pension Plan, Registration No. 686675**

TO: McCormick, Rankin &  
Associates Limited  
2655 North Sheridan Way  
Mississauga, ON  
L5K 2P8

Attention: Evelyn J. Gowan  
Controller  
Applicant

### Consent

ON or about January 28, 2000, the Superintendent of Financial Services caused to be served on McCormick, Rankin & Associates Limited a **Notice of Proposal** dated January, 2000 to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the **McCormick, Rankin & Associates Designated Pension Plan, Registration No.686675** (the Plan), to McCormick, Rankin & Associates Limited in the fixed amount of \$354,000.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the **McCormick, Rankin & Associates Designated Pension Plan, Registration No. 686675** of \$354,000 to McCormick, Rankin & Associates Limited.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that payment of all benefits to the members as per the surplus sharing agreement has been provided for.

DATED at Toronto, Ontario, this 16th day of March, 2000.

K. David Gordon  
Director, Pension Plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Pension Plan of Scott's Hospitality Inc. for John S. Lacey, Registration No. 0699330**

TO: Laidlaw Inc.  
c/o Sedgwick Noble Lowndes  
PO Box 439  
Toronto Dominion Centre  
Toronto, ON  
M5K 1M3

Attention: Ms. Sari Sanders  
**Applicant**

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the **Pension Plan of Scott's Hospitality Inc. For John S. Lacey, Registration No. 0699330**, to Laidlaw Inc., of the surplus remaining in the Plan. The surplus in the Plan (estimated as of November 1, 1996 to be \$47,767) is subject to deduction for expenses associated with the wind-up of the Plan and this surplus application.

DATED at Toronto, Ontario, this 23rd day of March, 2000 .

K. David Gordon  
Director, Pension Plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services

### **Consent**

ON or about February 2, 2000, the Superintendent of Financial Services caused to be served on Laidlaw Inc., by first class registered mail a **Notice of Proposal** dated January 31, 2000 to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the **Pension Plan of Scott's Hospitality Inc. For John S. Lacey, Registration No. 0699330** (the Plan), to Laidlaw Inc., of the surplus remaining in the Plan. The surplus in the Plan (estimated as of November 1, 1996 to be \$47,767) is subject to deduction for expenses associated with the wind-up of the Plan and this surplus application.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant within the time prescribed by subsection 89(6) of the *Act*.



IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the Pension Plan for Employees of **Elgistan Management Limited and Associated Companies** Registration No. 0245886

TO: Elgistan Management Limited  
215 Sydney Street  
Cornwall, ON  
K6H 3H3

Attention: John K. McBride  
President  
Applicant

### **Consent**

ON or about March 14, 2000, the Superintendent of Financial Services caused to be served on Mr. John McBride a **Notice of Proposal** dated March 10, 2000 to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the **Pension Plan for Employees of Elgistan Management Limited and Associated Companies, Registration No. 0245886** (the Plan), to Elgistan Management Limited in the amount of \$2,177,568 plus investment earnings minus expenses incurred thereon to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the **Pension Plan for Employees of Elgistan Management Limited and Associated Companies, Registration No. 0245886**, of \$2,177,568 plus investment earnings minus expenses incurred thereon to the date of payment to Elgistan Management Limited.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at Toronto, Ontario, this 20th day of April, 2000.

K. David Gordon  
Director, Pension Plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services

**IN THE MATTER OF** The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*);

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Retirement Plan for Eligible Employees of Midland Lumber & Building Supplies Ltd. Registration No. 954990**

**TO:** Midland Lumber & Building  
Supplies Ltd.  
200 Third Street  
PO Box 39  
Midland, ON  
L4R 4K6

Attention: Mr. Robert F. Bray  
President  
**Applicant**

### **Consent**

ON or about March 7, 2000, the Superintendent of Financial Services caused to be served on Midland Lumber & Building Supplies Ltd. a **Notice of Proposal** dated March 6, 2000, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the **Retirement Plan for Eligible Employees of Midland Lumber & Building Supplies Ltd., Registration No. 954990**, to Midland Lumber & Building Supplies Ltd. as follows:

1. In the amount of 50% of the Royal Trust Surplus (defined as that portion, estimated at \$181,748 as at December 31, 1997, of the surplus invested in the Bonavista Balanced Fund administered by the Royal Trust Corporation of Canada, plus investment earnings thereon to the date of payment less the reasonable expenses associated with its distribution).

2. In the amount of 50% of the Confederation Life Surplus (defined as such amount or amounts as may be paid to the Plan from time to time of that portion, estimated at \$49,317 as at December 31, 1997, of the surplus invested in the Confederation Guaranteed Fund administered by the liquidator of Confederation Life Insurance Company, plus investment earnings thereon to the date of payment less the reasonable expenses associated with its distribution).

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the **Retirement Plan for Eligible Employees of Midland Lumber & Building Supplies Ltd., Registration No. 954990**, to Midland Lumber & Building Supplies Ltd. as follows:

1. In the amount of 50% of the Royal Trust Surplus (defined as that portion, estimated at \$181,748 as at December 31, 1997, of the surplus invested in the Bonavista Balanced Fund administered by the Royal Trust Corporation of Canada, plus investment earnings thereon to the date of payment less the reasonable expenses associated with its distribution).

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies me that 50% of the Royal Trust Surplus has been paid out of the Plan to all members, former members and others persons entitled to payment pursuant to the Surplus Sharing Agreements filed with the Applicant's application.

2. In the amount of 50% of the Confederation Life Surplus (defined as such amount or amounts as may be paid to the Plan from





time to time of that portion, estimated at \$49,317 as at December 31, 1997, of the surplus invested in the Confederation Guaranteed Fund administered by the liquidator of Confederation Life Insurance Company, plus investment earnings thereon to the date of payment less the reasonable expenses associated with its distribution).

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies me that 50% of the Confederation Life Surplus has been paid out of the Plan to all members, former members and other persons entitled to payment pursuant to the Surplus Sharing Agreements filed with the Applicant's application.

**DATED** at Toronto, Ontario, this 3rd day of May, 2000.

K. David Gordon  
Director, Pension Plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services



## **Declaration that the Pension Benefits Guarantee Fund applies to Pension Plans – Subsection 83 (1) of the PBA**

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under section 83 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting **The Canada Machinery Corporation Salaried Employees' Pension Plan, Registration Number 0910836 (previously C-14249)**;

TO: Ernst & Young Inc.  
Ernst & Young Tower  
Toronto-Dominion Centre  
P.O. Box 251, 222 Bay Street  
Toronto, ON M5K 1J7

Attention: Brian Denega,  
Senior Vice President  
**Administrator of The Canada Machinery Corporation Salaried Employees' Pension Plan**

AND TO: Canada Machinery Corporation  
81 Curlew Drive  
North York, ON M3A 2P8

Attention: J. L. Campbell, President  
**Employer**

### **Declaration**

#### **WHEREAS:**

1. The Canada Machinery Corporation Salaried Employees' Pension Plan, Registration Number 0910836 (the "Salaried Employees Plan") is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act"); and
2. The Salaried Employees Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Pension Plan was wound up effective December 31, 1998; and
4. The Superintendent of Pensions appointed Ernst & Young Inc. as the administrator (the "Administrator") of the Pension Plan on February 12, 1992;
5. On January, 2000, I issued a Notice of Proposal to Make a Declaration that the Guarantee Fund applies to the Salaried Employees Plan (the "Notice of Proposal"), dated January, 2000; and
6. No Notice requiring a hearing was delivered to the Financial Services Tribunal (the "Tribunal") within the time prescribed by subsection 89(6) of the *Act*.

**NOW THEREFORE TAKE NOTICE** that I declare pursuant to sections 83 and 89 of the *Act* that the Guarantee Fund applies to the salaried Employees Plan for the following reasons:



1. The supplementary Wind-Up Report filed by the Administrator indicates an estimate funding deficiency of \$294,000.00 as at June 30, 1999, plus interest of 7.5% per annum to the date of payment
2. The Salaried Employees Plan was wound up effective December, 1988.
3. On July 16, 1990, Canada Machinery Corporation was dissolved by Articles of Dissolution.
4. The Administrator has advised that there are no assets available from the estate of Canada Machinery Corporation for the Salaried Employees Plan.

DATED at Toronto, Ontario, this 9th day of May, 2000.

Dina Palozzi

Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Pension Plan for Employees of Income Trust Company, Registration Number 0560235**;

TO: Arthur Andersen Inc.  
4 King Street West  
Suite 1050  
Toronto, ON M5H 1B6

Attention: Mr. David Kearney  
**Administrator**  
Income Trust Company  
181 Main Street West  
P.O. Box 870  
Hamilton, ON L8P 4S1

Attention: Mr. David Maylor  
**Director, Trust Administrator**  
Income Trustco Corporation  
181 Main Street West, M.  
P.O. Box 870  
Hamilton, ON L8P 4S1

Attention: Mr. Bernard Greenbaum  
Income Financial Corporation  
231 Main Street West  
Hamilton, ON L8P 1J4

Attention: Mr. Bernard Greenbaum  
**Secretary-Treasurer**

PricewaterhouseCoopers Inc.  
145 King Street West  
18th Floor  
Toronto, ON M5H 1V8

Attention: Mr. Adam Levy  
**Liquidator for Income Trust Company**

Mintz & Partners Limited  
1446 Don Mills Road  
Suite 100  
Don Mills, ON M3B 3N6

Attention: Mr. Brian Tannenbaum  
**Trustee in Bankruptcy for Income Trustco Corporation**

### **Declaration**

#### **WHEREAS:**

1. The Pension Plan for Employees of Income Trust Company, Registration Number 0560235 (the "Plan") is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Pensions issued an Order that the Plan be wound up effective March 6, 1995; and
4. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Plan on April 12, 1995; and
5. On March 23, 2000, I issued a Notice of Proposal dated March 20, 2000 to make a Declaration that the Guarantee Fund





applies to the Pension Plan; and

6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89(6) of the *Act*, has been received.

**NOW THEREFORE TAKE NOTICE** that I declare pursuant to sections 83 and 89 of the *Act*, that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan has been estimated to be 81.7%.
2. The employer, Income Trust Company, was placed into liquidation by the Office of the Superintendent of Financial Institutions under the provisions of the *Winding Up Act*.
3. The trustee in bankruptcy for Income Trustco Corporation has advised the Administrator that there are no funds available from the estate of Income Trustco Corporation to make payment to the Plan.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

**DATED** at North York, Ontario this 19th day of July, 2000.

K. David Gordon  
Director, Pension Plans Branch  
by Delegated Authority from  
Dina Palozzi  
Superintendent of Financial Services



## **Allocations of Money from the Pension Benefits Guarantee Fund – Subsection 34(7) of Regulation 909**

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under section 83 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting **The Canada Machinery Corporation Salaried Employees' Pension Plan, Registration Number 0910836 (previously C-14249)**;

TO: Ernst & Young Inc.  
Ernst & Young Tower  
Toronto-Dominion Centre  
P.O. Box 251, 222 Bay St.  
Toronto, ON M5K 1J7

Attention: Brian Denega  
Senior Vice-President  
**Administrator of The Canada Machinery Corporation Salaried Employees' Pension Plan**

### **Allocation**

WHEREAS on May 9th, 2000, I declared, pursuant to section 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act"), that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to **The Canada Machinery Corporation Salaried Employees' Pension Plan, Registration Number 0910836 (previously C-14249)** (the "Salaried Employees' Pension Plan");

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990,

Reg. 909, under the Act (the "Regulation"), an amount not to exceed \$294,000.00 as of June 30, 1999 plus interest of 7.5% per annum to the date of payment, to provide, together with the Ontario assets, for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 9th day of May, 2000.

Dina Palozzi  
Superintendent of Financial Services





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services, to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, 1 c. 28, respecting the **Pension Plan for Employees of Newman Steel Ltd., Local Union No. 8214 (the "Pension Plan")** Registration Number 416883;

TO: KPMG Inc.  
Suite 3300, Commerce Court West  
P. O. Box 31, Stn Commerce Court  
Toronto, ON M5L 1B2

Attention: Ms. Cindy Boates  
**Administrator of the  
Pension Plan for Employees of  
Newman Steel Ltd.  
Local Union No. 8214**

### **Allocation**

**WHEREAS** on the 15th day of December, 1994, the Chair of the Pension Commission of Ontario declared, pursuant to sections 83 and 90 of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 (the "*Act*"), that the Pension Benefits Guarantee Fund (the "*Guarantee Fund*") applies to the **Pension Plan for the Employees of Newman Steel Ltd., Local Union No. 8214 (the "Pension Plan")**;

**NOW THEREFORE** I shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the *Act* (the "*Regulation*"), an amount not to exceed \$665,661.00 determined as of August 1st, 2000 to provide, together with the Ontario assets, for the benefits determined

in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

**DATED** at North York, Ontario, this 12th day of June, 2000.

K. David Gordon  
Director, Pension Plans Branch  
by Delegated Authority from  
Dina Palozzi  
Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S. O. 1997, c. 28, respecting the **Pension Plan for Employees of Income Trust Company, Registration Number 0560235;**

**TO:** Arthur Andersen Inc.  
4 King Street West,  
Suite 1050  
Toronto, ON M5H 1B6

**Attention:** Mr. David Kearney  
**Administrator of the Pension  
Plan for Employees of Income  
Trust Company,  
Registration Number 0560235;**

### **Allocation**

WHEREAS in July, 2000, I declared, pursuant to sections 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act*, 1997, S. O. 1997, c. 28 (the "Act"), that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the **Pension Plan for Employees of Income Trust Company, Registration Number 0560235** (the "Pension Plan");

**NOW THEREFORE** I shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the *Act* (the "Regulation"), an amount not to exceed \$460,900.00 to provide, together with the Ontario assets for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the

Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

**DATED** at Toronto, Ontario, this 19th day of July, 2000.

Dina Palozzi  
Chief Executive Officer  
Superintendent of Financial Services





## Tribunal Activities

### Appointments of Tribunal Members

Name and Order in Council	Effective Appointment Date	Expiry Date
<b>Milczynski, Martha (Chair)</b>		
O.C. 1665/99	October 6, 1999	July 7, 2001
O.C. 1808/98	July 8, 1998	July 7, 2001
<b>McNairn, Colin (Vice-Chair)</b>		
O.C. 1809/98	July 8, 1998	July 7, 2001
<b>Bush, Kathryn M. (Vice-Chair)</b>		
O.C. 1666/99	October 6, 1997	June 16, 1999
O.C. 1191/99	June 17, 1999	June 16, 2001
O.C. 904/97	May 14, 1997	June 16, 1999
<b>Erllichman, Louis</b>		
O.C. 2527/98	December 9, 1998	December 8, 2001
O.C. 1592/98	June 17, 1998	December 16, 1998
<b>Forbes, William M.</b>		
O.C. 520/98	March 25, 1998	March 24, 2001
<b>Gavin, Heather</b>		
O.C. 11/99	January 13, 1999	January 12, 2002
<b>Greville, M. Elizabeth</b>		
O.C. 222/99	January 27, 1999	January 26, 2002
O.C. 2405/95	February 8, 1996	February 7, 1999
<b>Martin, Joseph P.</b>		
O.C. 1810/98	July 8, 1998	July 7, 2001
<b>Moore, C.S. (Kit)</b>		
O.C. 1591/98	July 1, 1998	June 30, 2001
<b>Robinson, Judy</b>		
O.C. 905/97	May 30, 2000	May 30, 2001*
<b>Stephenson, Joyce Anne</b>		
O.C. 2409/98	November 4, 1998	November 3, 2001
O.C. 1930/95	October 28, 1995	October 27, 1998
<b>Wires, David E.</b>		
O.C. 2166/99	February 26, 2000	February 25, 2003
O.C. 257/97	February 27, 1997	February 26, 2000

\* (appointment until either May 30, 2001 or the date FSCO/OSC merger takes effect)



## Financial Services Tribunal Decisions with Reasons

(Note: only those FST decisions pertaining to pensions are included in the section)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

**INDEX NO:** FST Decision #7 (FST File No. P0013)

**PLAN:** Pension Plan for Employees of Monsanto Canada Inc., Registration 341230

**DATE OF DECISION:** April 14, 2000

**PUBLISHED:** FSCO Bulletin 9/2 and FSCO website

**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended by the *Financial  
Services Commission of Ontario Act, 1997*, S.O.  
1997, c. 28 (the *Act*)

**AND IN THE MATTER OF** a Partial Wind-Up  
Report submitted by Monsanto Canada Inc. to  
the Superintendent of Financial Services  
respecting the Pension Plan for Employees of  
Monsanto Canada Inc., Registration Number  
341230 (the Plan),

**AND IN THE MATTER OF** a Hearing in  
accordance with subsection 89(8) of the *Act*;

**BETWEEN: MONSANTO CANADA INC.**

("Monsanto")

**Applicant**

-and-

**SUPERINTENDENT OF  
FINANCIAL SERVICES**

(the "Superintendent")

**Respondent**

-and-

**A GROUP OF CERTAIN FORMER  
MONSANTO EMPLOYEES and the  
ASSOCIATION OF CANADIAN  
PENSION MANAGEMENT**

**Additional Parties**

Vice Chair of the Tribunal and Chair of the Panel

Louis Erlichman

Member of the Tribunal

C. S. (Kit) Moore

Member of the Tribunal

**APPEARANCES:**

Freya J. Kristjanson and

Markus F. Kremer,

for Monsanto

Deborah McPhail,

for the Superintendent

Ronald B. Davis and

Mark Zigler,

for A Group of Certain Former

Monsanto Employees

Jeff W. Galway and

Randy V. Bauslaugh,

for The Association of Canadian

Pension Management

**HEARING DATE:** January 10, 2000

### **Reasons for Dismissal of Motion**

#### **The Background**

Monsanto brought a motion, at the commencement of the hearing in this proceeding, for an order disqualifying Mr. M. David R. Brown as an expert witness, prohibiting the Superintendent from calling him as a witness and prohibiting any

**BEFORE:**

Colin H. H. McNairn



party to the proceeding from referring to or relying on Mr. Brown's report dated November 30, 1999. That report was served by the Superintendent on the other parties but was not filed with the Tribunal with the result that the Tribunal is not aware of the contents of the report.

The main proceeding relates to a request for a hearing by Monsanto in connection with a notice of proposal by the Superintendent to refuse to approve a partial wind-up report, relating to the Pension Plan for Employees of Monsanto Canada Inc., filed by Monsanto.

The basis for the motion was that there would be a reasonable apprehension of bias on the part of the Tribunal if it were to entertain evidence from Mr. Brown and that such bias could and should be avoided by the Tribunal refusing to entertain such evidence.

The Tribunal was urged to find that there would be a reasonable apprehension of bias if Mr. Brown were to provide evidence because a reasonable person would be concerned that the Tribunal might not act impartially in weighing the evidence Mr. Brown might present or, to put it another way, that Mr. Brown would be perceived to hold a position of special influence with the Tribunal. The circumstances that, it was argued, would give rise to this concern or perception were as follows;

- during the periods 1977–1983 and 1988–1994, Mr. Brown served as a member of the Pension Commission of Ontario (the “PCO”) to which this Tribunal, in its hearing responsibilities in pension matters, could be regarded as successor,
- toward the end of Mr. Brown's most recent term as a member of the PCO, Mr. Kit Moore, who is a member of this Tribunal and of the panel in this proceeding, was also a member

of the PCO and sat with Mr. Brown on a number of hearing panels,

- Mr. Brown was a member of the PCO when various policies relating to the wind-up of pension plans and enhancements to pension benefits, including some policies referred to and relied on by the Superintendent in her written submissions in this proceeding, were adopted and published by the PCO, and
- Mr. Brown sat as a panel member on hearings before the PCO relating to pension surpluses where he had to interpret and apply some of those policies.

### Analysis and Conclusion

This is clearly not the usual case of a challenge for apprehension of bias. In the usual case, the purpose is to persuade a court or tribunal that a member should be required to stand aside and refrain from serving as an adjudicator in a particular proceeding. When the challenge succeeds, it is because there is some circumstance relating to the member that, when considered in light of any of the aspects of the proceeding, would give rise to a reasonable apprehension that the member would be biased if he or she were to continue as an adjudicator in the proceeding. The leading authority of *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369, involved just such a situation.

In this case, the purpose of the challenge is to disqualify a potential expert witness not, primarily at least, because of an apprehension that he might be biased, but because of an apprehension that the Tribunal might be biased were it to hear him. As the Alberta Court of Appeal observed in *Re Public Utilities Board* (1985), 21 Admin. L.R. 59, the suggestion that a witness' testimony should be disregarded or disqualified by virtue of such an apprehension





of bias is, indeed, “novel” (at p. 65).

While we recognize that the potential for an apprehension of bias raises important concerns, we are also keenly aware that the consequence of a successful challenge of the kind mounted in this case would be to interfere with the planned presentation by one of the parties, through an expert witness of its choosing, of its case before the Tribunal. There was no suggestion that the prospective evidence of the witness would be irrelevant or otherwise inadmissible or that the witness could not qualify as an expert in pension matters – say, for the purposes of a similar proceeding before another tribunal in which he had no previous role.

In these circumstances, we are reluctant to interfere with the Superintendent’s choice of an expert witness. Monsanto must, therefore, bear a heavy burden of proof on this motion. The evidence presented by Monsanto of Mr. Brown’s involvement with the PCO and its connection with this proceeding falls short of satisfying that burden. The following factors lead us to that conclusion:

1. Time Lapse

It has been five and a half years since Mr. Brown was a member of the PCO.

2. Professional Standards

Mr. Brown is a qualified actuary and as such is subject to a code of professional conduct. Accordingly, a reasonable person would fairly assume that his evidence would be given in accordance with his best professional judgment.

3. Degree of Association with PCO Policies

Mr. Brown was not shown to have any close personal involvement in the development of the PCO policies relating to the wind-up of pension plans and enhancement of pension benefits that were adopted and published by the PCO while he was a member.

4. Novelty of the Issues in this Proceeding

The issues in this proceeding are whether surplus must be distributed on the partial wind-up of a pension plan, whether payment of benefit enhancements on a partial wind-up constitutes a distribution of surplus and, in particular, an indirect distribution of surplus to the employer, and whether pensions and deferred pensions may remain in a pension plan upon partial wind-up. There was no evidence presented to indicate that when Mr. Brown was a member of the PCO he participated in any decisions relating to those issues.

5. Overlap with a Member of this Tribunal

Mr. Brown’s term as a member of the PCO overlapped with that of Mr. Moore, who is now a member of this Tribunal and this panel. However, that overlap occurred five and a half years ago, lasted for only two to three months, and resulted in the two of them sitting together on a limited number of applications to the PCO.

Since Monsanto has failed to satisfy the burden of proof as to a reasonable apprehension of bias on the part of the Tribunal were Mr. Brown to testify, the motion is dismissed.

**DATED** the 20th day of January, 2000 at the City of Toronto in the Province of Ontario.

Colin H. H. McNairn  
Chair of the Panel

Louis Erlichman  
Member of the Panel

C. S. (Kit) Moore  
Member of the Panel





**INDEX NO:** FST Decision #11 (FST File No. P0086-1999)

**PLAN:** Ontario Teacher's Pension Plan, Registration 0345785

**DATE OF DECISION:** February 9, 2000

**PUBLISHED:** FSCO Bulletin 9/2 and FSCO website

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario, 1997*, S.O. 1997, c. 28; (the *Act*)

**AND IN THE MATTER OF** a decision of the Superintendent Of Financial Services dated October 27, 1999, that a former member of the **Ontario Teachers' Pension Plan, Registration No. 0345785**, Thomas Caster, was not entitled to a transfer of the commuted value of his pension under the terms of the Plan and subsection 42(3) of the PBA;

**AND IN THE MATTER OF** a Hearing in accordance with subsection 89(8) of the *Act*

**BETWEEN: THOMAS CASTER**

**Applicant**

-and-

**SUPERINTENDENT OF FINANCIAL SERVICES and  
ONTARIO TEACHERS' PENSION  
PLAN BOARD**

**Respondents**

**BEFORE:**

Ms. Martha Milczynski, Chair of the Tribunal and the Panel

Ms. Judith Robinson, Member of the Tribunal

Mr. William Forbes, Member of the Tribunal

**APPEARANCES:**

For the Applicant:

Mr. Alan Redway, Q.C.

For the Superintendent:

Ms. Deborah McPhail

For the Ontario Teachers' Pension Plan Board:

Ms. Anne Slivinskas

**HEARING DATE:**

January 10, 2000

Toronto, Ontario

### **Reasons for Decision**

#### **Issue and summary**

1. On January 19, 2000, the Tribunal dismissed an application brought by the Applicant, Thomas Caster, a member of the Ontario Teachers' Pension Plan (the "Plan"). The issue was whether:

In the circumstances of this case, and in the event of the Applicant's termination of employment, should the Ontario Teachers' Pension Plan Board (the "Board") be required to transfer an amount equal to the commuted value (CV) of the Applicant's pension pursuant to section 42 of the *Pension Benefits Act*?

2. The Tribunal held that section 42(3) of the *Pension Benefits Act* ("PBA") is clear that the option to transfer the commuted value of an accrued pension on termination is not available to a pension plan member who is eligible to receive immediate payment of a pension benefit unless the terms of the pension plan provides for such an entitlement. Having become eligible



for an immediate pension on June 1, 1998 under section 43(1a) of the Plan and by virtue of section 37(2) of the Plan that expressly excludes a member who is entitled to an immediate pension from entitlement to a transfer of the commuted value of his or her pension, the Applicant does not therefore have the option to transfer his commuted value in the event of the termination of his employment.

### Facts

3. Mr. Caster was born on March 2, 1945 and commenced his teaching career and participation in the Plan in 1967. He is currently employed as a teacher and is still a member of the Plan.
4. On April 24, 1998, the Plan announced that an early retirement window would be in effect from June 1, 1998 to December 31, 2002. Effective June 1, 1998, a Plan member whose age and qualifying years of service equalled 85 points would be eligible for the improved early retirement option ("Factor 85") under the Plan. Information regarding Factor 85 was communicated through a "Teachers' Pension Plan Board Bulletin" dated April 24, 1998 and a "Teachers' Pension Plan Board Exchange" dated April 1998. The "Exchange" indicated that Factor 85 affected the ability of an eligible Plan member to take the commuted value of his or her pension:

... You can only transfer the commuted value of your pension before you're eligible for an immediate pension. An 85-factor window means you may be eligible to retire with an unreduced pension sooner.

If you already have your 85-factor and are interested in taking a commuted value transfer, you must resign by May 31, 1998.
5. The Applicant was aware that he would be eligible for Factor 85 on June 1, 1998 and on April 28, 1998 he requested that the Board provide him with an estimate of his termination options as at May 31, 1998.
6. On or about May 6, 1998, the Board provided the Applicant with details of his estimated termination options and advised that once the Factor 85 took effect on June 1, 1998, any member who ceased employment with at least Factor 85 would not be eligible for a commuted value transfer. Mr. Caster also received a brochure entitled "Weighing Your Options", dated April 22, 1998 that indicated:

To take the CV transfer option, teachers eligible for an 85-factor pension June 1, 1998 must apply by May 31, 1998.

You must quit and apply for a CV transfer before you're eligible for an 85-Factor pension or age 55. For example, teachers under age 55 who are eligible for an 85-factor pension on June 1, 1998 must terminate employment and apply by May 31, 1998.
7. In his evidence, the Applicant stated that he knew the effect Factor 85 would have on his ability to take the commuted value of his accrued pension if he terminated his employment on or after June 1, 1998. The Applicant also testified that he made his decision not to terminate his employment before June 1, 1998 because:
  - (1) He did not want to leave his students prior to the end of the school year on such short notice;
  - (2) There was uncertainty as to his eligibility for certain other benefits and payments if he were to terminate and opt for a commuted value transfer – this issue was the subject of grievance arbitration



proceedings which did not involve the Applicant but which could affect his decision; these proceedings had not concluded by June 1, 1998; and

- (3) He was concerned with the haste and lack of detailed information surrounding the amendment process.
8. The Tribunal can understand that the Applicant had concerns regarding such a significant decision with which he was faced. However, in considering his request for a transfer of the commuted value of his pension, the Tribunal is bound by the provisions of the PBA, and the terms of the Teachers' Plan.

### ***Pension Benefits Act***

9. The relevant provisions of the PBA are:

- s. 42 (1) A former member of a pension plan who, on or after the 1st day of January, 1988, terminates employment or ceases to be a member of the pension plan and who is entitled to a deferred pension is entitled to require the administrator to pay an amount equal to the commuted value of the deferred pension,
  - (a) to the pension fund related to another pension plan, if the administrator of the other pension plan agrees to accept the payment;
  - (b) into a prescribed retirement savings arrangement; or
  - (c) for the purchase for the former member of a life annuity that will not commence before the earliest date on which the former member would have been entitled to receive payment of pension benefits under the pension plan.
- (3) Subsection (1) does not apply to a

former member whose employment is terminated and who is entitled to immediate payment of a pension benefit under the pension plan or under section 41, unless the pension plan provides such an entitlement.

### **Teachers' Pension Plan**

10. Effective June 1, 1998 the relevant provisions of the Plan are as follows:

- s. 37 (1) A member entitled to a deferred pension who ceases to be employed in education is entitled to a transfer of the commuted value of the deferred pension to another retirement savings arrangement in accordance with section 42 of the *Pension Benefits Act* and to a refund or transfer of excess contributions, calculated under section 36, subject to the limitations of the *Income Tax Act* (Canada). (Last amended June 1, 1995 – Effective June 1, 1995)
- (2) A member who is entitled to an immediate pension is not entitled to a refund or transfer under this section. (Last amended June 1, 1995 – Effective June 1, 1995)
- s. 43 (1) A member who has accumulated at least that number of years of qualifying service that, when added to the member's age upon termination of employment in education, totals ninety years is entitled to a retirement pension for the member's lifetime calculated under subsection (4). (Last amended October 10, 1995 – Effective September 1, 1995)
- (1a) A member who ceases to be employed in education between June 1, 1998 and December 31, 2002, or during any extension of this period, and who has





accumulated at least that number of years of qualifying service that, when added to the member's age upon termination of employment in education, totals eighty-five years is entitled to a retirement pension for the member's lifetime calculated under subsection (4). (Last amended May 27, 1998 – Effective June 1, 1998)

(2) A member who ceases to be employed in education after the 31st day of May, 1987 and before the 1st day of September, 1990 and who has thirty-five years of qualifying service is entitled to a retirement pension for the member's lifetime calculated under subsection (4). (Last amended October 10, 1995 – Effective September 1, 1995)

(2a) A member who has accumulated thirty-five or more years of credited service is entitled to a retirement pension for the member's lifetime calculated under subsection (4). (Last amended February 20, 1997 – Effective January 1, 1997)

11. As set out above, the Teachers' Plan does not permit a Plan member to elect the transfer of the commuted value of an accrued pension, once the member has become entitled to immediate payment of a pension.

## Order

12. While invited by counsel for the Applicant to consider the fairness of the process and the proposition that the Tribunal had equitable jurisdiction by virtue of the parties' right of appeal under s. 91 of PBA and s. 98 of the *Courts of Justice Act*, we find that our jurisdiction as an administrative body

established by statute is fully set out in this case under the PBA and the *Financial Services Commission of Ontario Act*. Further and in any event, we find that the provisions governing portability of accrued pensions are clearly reflected in the Plan, which in this case have been administered in accordance with the terms of the Plan and the PBA.

13. Accordingly, having become eligible for immediate payment of a pension benefit under the Plan on June 1, 1998, in the event of the Applicant's termination of employment, he will not be entitled to elect the transfer of the commuted value of his pension.

14. The application is dismissed.

**DATED** at Toronto, this 9th day of February, 2000.

Martha Milczynski

Chair, Financial Services Tribunal

Judith Robinson

Member, Financial Services Tribunal

William Forbes

Member, Financial Services Tribunal





INDEX NO: FST Decision #9 (FST File No. P0063-1999)

PLAN: Ontario Public Service Pension Plan, Registration 208777

DATE OF DECISION: March 27, 2000

PUBLISHED: FSCO Bulletin 9/2 and FSCO website

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *Act*);

AND IN THE MATTER OF a Complaint by David Horgan relating to the **Ontario Public Service Pension Plan, Registration No. 208777** (the Plan);

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the *Act*.

BETWEEN: DAVID HORGAN

Applicant

-and-

SUPERINTENDENT OF  
FINANCIAL SERVICES

Respondent

### Reasons for Decision

#### Summary

1. On December 6, 1999, the Financial Services Tribunal allowed the preliminary motion brought by counsel for the Superintendent and dismissed the Applicant's request for a hearing under subsection 89(8) of the *Pension Benefits Act*. Having heard the evidence adduced by the parties at the hearing and having reviewed the Agreed Statement of Facts and heard the parties' submissions, the Tribunal found that the Superintendent of Financial Services ("Superintendent") had not

made a decision in respect of the Applicant's complaint and that consequently, the Tribunal did not have jurisdiction to proceed.

#### Facts

2. On December 17, 1998, while employed as a valuation manager with the Ministry of Finance's Property Assessment Office, the Applicant signed a "Notice of Election" advising that he was retiring from his employment effective December 31, 1998. The Applicant was a member of the Ontario Public Service ("OPS") Pension Plan, and he proceeded to sign the Plan's "Termination of Membership Notice" on December 23, 1998 stating that the reason for his termination was retirement on immediate pension, effective December 31, 1998.
3. Pursuant to a memorandum of understanding between the Ministry of Finance and the Ontario Property Assessment Corporation ("OPAC"), the Ministry of Finance divested its property assessment operations to OPAC. The divestiture was effective at 12:01 a.m. on December 31, 1998.
4. The Applicant accepted an offer of employment with OPAC that had been made on December 15, 1998 and continued his work with OPAC effective December 31, 1998. As part of the terms of the divestiture, the Applicant became a member of the OMERS in respect of future pensionable service.



5. It is the Applicant's position that by his actions, he retired from the Ministry of Finance and is entitled to receive immediate payment of a pension benefit from the OPS Plan. The Plan administrator, the Ontario Pension Board took the position that pursuant to section 80 of the *Pension Benefits Act*, the Applicant's employment was deemed not to have been terminated and that rather than retiring, the Applicant accepted a position with OPAC in conjunction with the Ministry's divestiture. The Board denied the Applicant's claim for payment of a pension benefit by way of letter dated April 9, 1999.

6. On May 12, 1999, the Applicant wrote to the person he thought was the Chair of the Financial Services Commission of Ontario requesting a hearing be scheduled so that the Commission could consider his situation. On May 21, 1999, the Registrar of the Financial Services Tribunal wrote to the Applicant stating:

Since it is the responsibility of the Superintendent to consider the issues you have raised and to make a decision on what action to take, by copy of this letter, I have referred your letter to Mr. David Gordon, Director, Pension Plans Branch, so that he can review the matter and advise the Superintendent accordingly.

7. The Applicant also received a letter dated May 27, 1999 from Mr. Gordon stating:

I have referred your letter to Mr. John Graham, the Pension Officer responsible for this pension plan, and have asked him to look into the matter. Upon completion of his review, he will be in touch with you.

8. Mr. Graham replied to the Applicant by letter dated July 5, 1999 in which he advised:

We have reviewed the response you received from the Plan dated April 9, 1999. Based on our review of the information and documents provided to us, we have no basis on which to conclude that the administrator has failed to comply with the requirements of the *Act* and regulations thereunder, or with the Financial Services Commission of Ontario's Policy. If additional information or documents become available which might demonstrate non-compliance by the administrator, please send them to us and we will be pleased to review them.

9. On August 9, 1999 the Applicant filed his request for a hearing before the Financial Services Tribunal. By letter dated August 31, 1999 counsel for the Superintendent wrote to counsel for the Applicant:

It will be our position at the pre-hearing conference that the Financial Services Tribunal does not have jurisdiction to hear your client's complaint, as no decision or refusal to make a decision has been made by the Superintendent. Section 89 of the *Pension Benefits Act* does not provide a right to a hearing in circumstances where the Superintendent has not made a decision or refusal as listed in subsection (1), (2), (3), (3.1), (3.2), (4) or (5). I am enclosing a copy of section 89 for your reference.

In this case, the decision was made by John Graham as Pension Officer and not under any delegated authority from the Superintendent. As such, I am suggesting that your hearing request be withdrawn and that your client request the Superintendent to make an order under section 87 of the *Pension Benefits Act*.



10. At the hearing of the preliminary motion on December 6, 1999, the Tribunal heard the evidence of Mr. John Graham, the FSCO Pension Officer with whom the Applicant had contact and also the evidence of the Applicant. We accept Mr. Graham's evidence that he had neither the direct statutory nor delegated authority to make a decision relating to the Applicant's claim for benefits from which an appeal or request for hearing could be brought. There was also no evidence offered to suggest that the Superintendent or anyone with the proper delegated authority of the Superintendent had made a decision regarding the Applicant's claim for payment of a pension.
11. With respect to the Applicant's evidence, the Applicant spoke of what he believed he was being told about his claim for payment of a pension benefit and the correct course of action. The Tribunal can understand the Applicant's frustration of having to deal with complex pieces of legislation like the *Pension Benefits Act* and the *Financial Services Commission of Ontario Act*, and a new and renamed regulator with different powers and organization than its predecessor. However, whatever misunderstanding or misapprehension there was in July, 1999, when the request for a hearing was filed, was cleared up with the advice of counsel for the Superintendent in her letter of August 31, 1999. There was no extreme delay in communicating the correct state of affairs and the appropriate course of action to the Applicant. Consequently, the Tribunal does not find that the PCO decision in *Stanley Dwyer v. Chrysler Canada Ltd. et al.*, PCO, August 19, 1998, XDEC-40 ("Dwyer") has application in this case and distinguishes

it on its facts.

12. In any event, the Applicant chose to continue with his request for a hearing to the Tribunal. The Tribunal, however, as a creature of statute has only the powers and jurisdiction given it by the Legislature.

### **Jurisdiction of the Tribunal**

#### ***Financial Services Commission of Ontario Act***

13. Section 20:

- s.20 The Tribunal has exclusive jurisdiction to,
  - (a) exercise the powers conferred on it under this *Act* and every other *Act* that confers powers on or assigns duties to it; and
  - (b) determine all questions of fact or law that arise in any proceeding before it under any *Act* mentioned in clause (a).

#### ***Pension Benefits Act***

14. Sections 89(1), 89(2), 89(6), 89(8), 89(9)

- s .89 (1) Where the Superintendent proposes to refuse to register a pension plan or an amendment to a pension plan or to revoke a registration, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant or administrator of the plan.
- (2) Where the Superintendent proposes to make or to refuse to make an order in relation to, [*FSCO Act* s. 208(1)]
  - (a) subsection 42(9) (repayment of money transferred out of pension fund);
  - (b) subsection 43(5) (repayment of money paid to purchase pension, deferred pension or ancillary benefit);





- (c) subsection 80(6) (return of assets transferred to pension fund of successor employer); [FSCO Act s.208(2)]
- (d) subsection 81(6) (return of assets transferred to new pension fund); [FSCO Act s. 208(2)]
- (d.1) section 83 (the Guarantee Fund applies to a pension plan). [FSCO Act s. 208(2)]
- (e) section 87 (administration of pension plan in contravention of Act or regulation), or [FSCO Act s. 208(3)]
- (f) section 88 (preparation of a report). [FSCO Act s. 208(3)]

the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and on any other person to whom the Superintendent proposes to direct the order.'

- (6) A notice under subsection (1), (2), (3), (3.1), (3.2), (4) or (5) shall state that the person on whom the notice is served is entitled to a hearing by the Tribunal if the person delivers to the Tribunal, within thirty days after service of the notice under that subsection, notice in writing requiring a hearing, and the person may so require such a hearing. [FSCO Act s. 208(6)]
- (8) Where the person requires a hearing by the Tribunal in accordance with subsection (6), the Tribunal shall appoint a time for and hold the hearing. [FSCO Act s. 208(7)]
- (9) At or after the hearing, the

Tribunal by order may direct the Superintendent to carry out or to refrain from carrying out the proposal and to take such action as the Tribunal considers the Superintendent ought to take in accordance with this Act and the regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent. [FSCO Act I s. 208(7)]

### Order

- 15. Accordingly, having found that neither the Superintendent nor anyone with the proper delegated authority made a final decision (to issue a notice of proposal to issue an order or to refuse to issue such notice) regarding the Applicant's claim, the Tribunal is without jurisdiction to proceed with the merits of the Applicant's request for a hearing and the request is hereby dismissed.

DATED at Toronto, this 27th day of March, 2000.

Martha Milczynski  
Chair, Financial Services Tribunal  
Kit Moore  
Member, Financial Services Tribunal  
Judith Robinson  
Member, Financial Services Tribunal





**INDEX NO:** FST Decision #10 (FST File No. P0013)

**PLAN:** Pension Plan for Employees of Monsanto Canada Inc, Registration 341230

**DATE OF DECISION:** April 14, 2000

**PUBLISHED:** FSCO Bulletin 9/2 and FSCO website\*

**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended by the *Financial  
Services Commission of Ontario Act, 1997*, S.O.  
1997, c. 28 (the “*Act*”)

**AND IN THE MATTER OF** a Partial Wind-Up  
Report submitted by Monsanto Canada Inc. to  
the Superintendent of Financial Services  
respecting the Pension Plan for Employees of  
Monsanto Canada Inc., Registration Number  
341230 (the “*Plan*”),

**AND IN THE MATTER OF** a Hearing in  
accordance with section 89(8) of the *Act*;

**BETWEEN: MONSANTO CANADA INC.**  
 (“Monsanto”)

**Applicant**

-and-

**SUPERINTENDENT OF  
FINANCIAL SERVICES**  
(the “*Superintendent*”)

**Respondent**

-and-

**A GROUP OF CERTAIN  
TERMINATED MONSANTO  
EMPLOYEES  
and the ASSOCIATION OF  
CANADIAN PENSION  
MANAGEMENT**

**Additional Parties**

**BEFORE:**

Colin H. H. McNairn  
Vice Chair of the Tribunal and Chair of the Panel

Louis Erlichman  
Member of the Tribunal and of the Panel

C. S. (Kit) Moore  
Member of the Tribunal and of the Panel

**APPEARANCES:**

Freya J. Kristjanson and  
Markus F. Kremer,  
for Monsanto

Deborah McPhail,  
for the Superintendent

Ronald B. Davis and  
Mark Zigler,  
for A Group of Certain Terminated Monsanto  
Employees

Jeff W. Galway and  
Randy V. Bauslaugh,  
for The Association of Canadian Pension  
Management

**HEARING DATES:**

January 10–12 and February 7–11, 2000

\* This decision is under appeal to Ontario Superior Court of Justice Divisional Court.



## **Reasons for Majority Decision**

### **A. The Background**

Monsanto Canada Inc. ("Monsanto") maintained three separate pension plans in respect of its various operations. These plans were consolidated, with effect from January 1, 1996, to form the Pension Plan for Employees of Monsanto Canada Inc. (the "Plan").

As a result of a reorganization of Monsanto, involving a staff reduction program and a plant closure, 146 active members of the Plan (the "Affected Members") received notice that their employment with Monsanto would terminate with their last days of work falling on various dates between December 31, 1996 and December 31, 1998.

Monsanto offered the Affected Members a package of benefits on the termination of their employment, including cash severance and pension improvements for the more senior employees, allowing for early entitlement to enhanced pension benefits. Two separate amendments to the Plan ("Amendment No. 1" and "Amendment No. 2") were filed with the pension regulator to provide the enhanced benefits (the "Benefit Enhancements").

Amendment No. 1, relating to certain members of the Plan affected by the staff reduction, was filed by Monsanto on March 31, 1997 and registered by the pension regulator on August 7, 1997 and, in revised form, on March 18, 1998. Amendment No. 2, relating to certain members of the Plan affected by the plant closure, was filed by Monsanto on June 30, 1997 and ultimately registered by the pension regulator on March 23, 1999. In all, 45 of the 146 Affected Members were eligible for the Benefit Enhancements provided

by these Amendments.

At all times before July 1, 1998, the pension regulator was the Pension Commission of Ontario (the "PCO") and on and after that date it was the Superintendent of Financial Services appointed under the *Financial Services Commission of Ontario Act, 1997* (the "Superintendent").

On August 11, 1997, following the initial registration of Amendment No. 1 and the filing of Amendment No. 2, Monsanto submitted a report (the "Partial Wind-Up Report") to the pension regulator in respect of the partial wind-up of the Plan as it related to the Affected Members (the "Partial Wind-Up"). The Partial Wind-Up Report provided that the Partial Wind-Up was to be effective May 31, 1997. At the time, the Plan had an actuarial surplus of \$14.3 million after the cost of the Benefit Enhancements, estimated at approximately \$4.82 million, was taken into account. In a letter to the pension regulator dated April 20, 1998, Towers Perrin, the actuary for the Plan, portrayed the cost of the Benefit Enhancements as funded first from the excess of the pro-rata share of market value of assets over liabilities for the Affected Members and, as to the remaining \$1.76 million, "by the use of excess assets under the Plan".

On December 1, 1998, the Superintendent served Monsanto with a notice of proposal to refuse to approve the Partial Wind-Up Report<sup>1</sup> (the "Notice of Proposal"). The reasons for the proposed refusal, as set out in the Notice of Proposal, were that the Partial Wind-Up Report did not meet the requirements of the *Pension Benefits Act* (the "Act") and the regulations under the Act and did not protect the interests of the



members of the Plan in the following respects;

- it did not provide for the distribution to the Affected Members of surplus assets relating to that part of the Plan being wound up,
- it contemplated the application of surplus to pay for the Benefit Enhancements without going through the process of a surplus withdrawal application although it was effectively paying itself surplus and then redirecting that surplus to certain of the Affected Members, all in order to avoid having to pay them more cash severance,
- in contemplating the use of surplus, in the manner proposed, in order to provide Benefit Enhancements to only 45 of the 146 Affected Members, it disregarded the principles of trust law, which require an equitable and proportionate distribution of surplus,
- it was preceded by a notice of the Partial Wind-Up given to the Affected Members that was deficient for failure to include a statement of the method of distribution of surplus assets and the formula for allocation of any surplus, and it proposed that pensions and deferred pensions payable to Affected Members could remain in the Plan, which is inconsistent with a distribution of those assets in the pension fund relating to the part of the Plan that is being wound up.

On December 31, 1998, Monsanto filed a request for a hearing (the "Request for a Hearing") by this Tribunal in respect of the Notice of Proposal. At a pre-hearing conference convened by the Tribunal, the Association of Canadian Pension Management (the "ACPM") and A Group of Certain Terminated Monsanto Employees, comprising some of the Affected Members (the "Group of Employees"), were added as parties

to this proceeding, along with Monsanto and the Superintendent.

## B. The Surplus Distribution Issue

The first issue is whether Monsanto is required, in its Partial Wind-Up Report, to allocate a portion of the actuarial surplus in the Plan existing at the Partial Wind-Up Date to the Affected Members and to provide for the distribution of that portion in connection with the Partial Wind-Up. The Report does not contemplate such a distribution, but says that the benefits to which the Affected Members are entitled under the Plan, as at the Partial Wind-Up Date, will be recognized and taken into account for the purpose of determining entitlement, if any, to surplus at the time of full wind-up of the Plan.

The Superintendent's position was that an allocation and distribution of surplus are required on a partial wind-up on the basis of section 70(6) of the *Act*, as read with certain other provisions of the *Act* and Regulation 909 (the "Regulation"). The Superintendent was supported in this by the Group of Employees.

Section 70(6) of the *Act* provides that:

On the partial wind-up of a pension plan, members, former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits they would have on a full wind-up of the pension plan on the effective date of the partial wind-up.

In these reasons, we use the word "members" to refer collectively to the members, former members and other persons entitled to benefits under a pension plan.

The first question about section 70(6) that needs to be addressed is whether it ensures minimum rights and benefits on a partial wind-



up simply to the members of the plan who are in the partial wind-up group or to all the members. While a literal reading of the provision would suggest the latter, that is not a sensible interpretation as it would give ongoing members rights that are inconsistent with their continuing membership in the plan, such as an immediate right to transfer their pension entitlements out of the plan without regard to the terms of the plan. Section 70(6) should, therefore, be taken to ensure minimum rights and benefits to those affected by a partial wind-up, and not to others, despite its lack of clarity in this respect.

Monsanto maintained that those members affected by a partial wind-up of a pension plan are afforded a right that is not less than the right they would have in respect of surplus on a full wind-up, as of the partial wind-up date, if they are given the right to participate in any surplus in the event of a full wind-up of the plan. That is what the Partial Wind-Up Report contemplated. The ACPM maintained that section 70(6) cannot be taken to confer any rights at all in respect of surplus for a number of reasons, including the fact that it appears in the part of the *Act* headed "WINDING UP" rather than the part of the *Act* headed "SURPLUS".

The term "partial wind-up", which is used in section 70(6), is defined for the purposes of the *Act* to mean;

the termination of part of a pension plan and the distribution of the assets of the pension fund related to that part of the pension plan.

It was argued by the Superintendent and the Group of Employees that the term "assets" must include those assets that can be said to represent surplus since the term "surplus" is defined for the purposes of the *Act* to mean;

the excess of the value of the assets of a pension fund related to a pension plan over the value of the liabilities under the pension plan...

However, the definition of "partial wind-up" does not answer the question of whether any of the assets of a pension fund that might be said to represent surplus are "related to that part of the pension plan" that is being partially wound up. That question is something we have to resolve in deciding this case. The definition does not assist in that decision. In any case, the definition of "partial wind-up" in the *Act* must be read in light of the purpose of a statutory definition, which is to give meaning to the defined term when it is used in the body of the statute rather than to establish independent obligations.

A number of procedural provisions of the *Act* and Regulation were referred to in argument as relevant to a proper understanding of the scope and effect of section 70(6). Given their procedural nature, these provisions cannot control the meaning of the substantive requirements of section 70(6), although they may shed some light on the appropriate scope and effect of that provision. With that possibility in mind, we will now consider those procedural provisions.

Section 70(1) requires the administrator of a pension plan that is to be wound up, in whole or in part, to file a wind-up report that sets out, among other things;

(c) the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits.

In the context of a full wind-up of a pension plan, this provision clearly relates to the methods of allocating and distributing all the assets of a





pension plan. In the context of a partial wind-up, it cannot be taken to relate to the methods of allocating and distributing all such assets as that would be inconsistent with the continuation of the plan, which a partial wind-up assumes. We interpret the term “assets”, as used in this provision, to mean those assets that are in fact proposed, or in law required, to be distributed, whether on a partial or full wind-up of a pension plan. Therefore, the provision does not assist in determining when the law requires a distribution.

Section 72(1) of the *Act* directs the administrator of a pension plan, on a partial or full wind-up, to give members a statement setting out their benefit entitlements, options available and other prescribed information. Section 28(2) of the Regulation, in turn, prescribes the information that is to form part of any such statement, as including;

- (q) if there are surplus assets, a statement of the method of distribution and, if applicable, the formula for allocation of any surplus among the plan beneficiaries.

By comparison, the statement that the administrator of a pension plan must give a member of the plan whose membership ceases outside the context of a partial or full wind-up need not say anything about surplus or surplus assets (see s. 28(1) of the *Act* and s. 41(1) of the Regulation).

The requirement of section 28(2)(q) of the Regulation is not determinative of the scope and effect of section 70(6) of the *Act* because it is in a regulation, a form of “subordinate legislation” with limited value in interpreting the parent legislation (see R. Sullivan, *Driedger on the Construction of Statutes*, 3d ed., (Toronto:

Butterworths, 1994), [at p. 246].

We were also referred to section 29.1(4) of the Regulation, which directs the administrator of a pension plan to give written notice to the Superintendent, within 30 days after final distribution of the assets of a pension plan under section 70 of the *Act*, to the effect that all the assets of the plan have been distributed. Once again, this provision is in a regulation and should, therefore, be given limited weight in the interpretation of the *Act*. Moreover, as in the case of section 70(1)(c), it should logically be interpreted to refer to those assets that are in fact proposed, or in law required, to be distributed, whether on a partial or a full wind-up of a pension plan.

As this discussion demonstrates, the provisions of the *Act* and Regulation relating to full wind ups of pension plans have been extended to cover partial wind ups but do not appear to deal with the inherent differences between the two processes. As a result, there is a lack of precision in the way partial wind ups are dealt with in the *Act* and Regulation.

In the leading case of *Schmidt v. Air Products of Canada Ltd.*, [1994] 2 S.C.R. 211, Mr. Justice Cory, giving the majority judgment of the Supreme Court of Canada, described pension plan surpluses and entitlement to them in the following way:

An ongoing pension fund is said to have an “existing” or “actuarial” surplus when the estimated value of the assets in the fund exceeds the estimated value of all the liabilities (i.e. pension benefits owed employees) of the fund. When the calculated fund liabilities exceed the calculated fund assets, the plan is said to be in a state of “unfunded liability”. Once the plan is wound up, assets and liabilities can be precisely



determined. The fund will then be in a state of “actual” or “real” surplus or liability. [At p. 624] Once funds are contributed to the pension plan they are “accrued benefits” of the employees. However, the benefits are of two distinct types. Employees are first entitled to the defined benefits provided under the plan...The other benefit to which the employees may be entitled is the surplus remaining upon termination. This amount is never certain during the continuation of the plan. Rather, the surplus exists only on paper. It results from actuarial calculations and is a function of the assumptions used by the actuary. Employees can claim no entitlement to surplus in an ongoing plan because it is not definite. The right to surplus is crystallized only when the surplus becomes ascertainable upon termination of the plan. Therefore, the taking of a contribution holiday [by the employer does not represent] a reduction of accrued benefits. [At p. 654]

We interpret the second paragraph to mean that a member’s interest in the surplus of a pension plan is simply a form of benefit that remains contingent while the plan is ongoing. That benefit consists of an entitlement to participate in a distribution of any actual surplus remaining upon final wind-up of the plan. Upon such wind-up, the benefit crystallizes into a right to participate in a distribution of any such surplus. The Superintendent argued that the rights of those affected by a partial wind-up are equivalent to the rights they would have on a full wind-up, as at the partial wind-up date, only if there is a crystallization of their right to surplus, in the sense of the *Air Products* decision, by virtue of the partial wind-up. However, the right that

crystallizes on the full wind-up of a pension plan is a right to participate in any surplus remaining upon the final distribution of all the assets of the plan. Therefore, if section 70(6) of the *Act* gives those affected by a partial wind-up that right, it does not follow that they would be entitled to participate in a distribution of the surplus in the plan at the partial wind-up date. In our view, the most they would have is a right to participate in a distribution of actual surplus on a full wind-up on the basis of their membership in the plan at the partial wind-up date without disqualification because they have ceased to be members of the plan before the full wind-up. If they have that right, they are better off than they would otherwise be. But for section 70(6), they would stand to lose their entitlement to participate in a distribution of actual surplus on a full wind-up at such time as they ceased to be members of the plan.

If the *Act* were to be read as requiring a distribution of surplus on the partial wind-up of a pension plan to members of the partial wind-up group, the result could be unfair to the ongoing members of the plan. They would only have a potential right to participate in the distribution of any remaining part of the undistributed surplus if and when the plan were to be ultimately wound up in full (or, as to them, in part) while they were still members of the plan. By comparison, those affected by the partial wind-up would have an immediate right to participate in the distribution of a determinate amount of surplus. If the *Act* were to require, in clear terms, that such a distinction is to be made between the surplus rights of the two groups of members, that distinction would have to be respected. But that is not the case.



Consequently, the potential unfairness to the ongoing members of requiring a distribution of some of the surplus on a partial wind-up provides an additional reason for avoiding an interpretation of section 70(6) that would produce that result.

Given the very general language of section 70(6) of the *Act*, which does not refer to surplus rights specifically, we do not think that the *Act* can be taken to require an allocation and distribution of some portion of the surplus of a pension plan on a partial wind-up.

If the effect of a partial wind-up were to divide a pension plan and the assets in the related pension fund into two parts – one part in respect of liabilities for members of the partial wind up group and the other part in respect of the liabilities for the remaining members of the plan – then an accompanying division of surplus between those parts would be a logical consequence. On such a division of assets, liabilities and surplus, each part would, effectively, represent a separate plan. The surplus in the first plan (that for the members of the partial wind-up group) would then be subject to distribution as that plan would terminate and the members would have a crystallized right, in the sense of the *Air Products* decision, to the surplus in the plan. This is so because the plan would be subject to liquidation, in which event its assets and liabilities could be precisely determined and the actual surplus ascertained. The Group of Employees argued that this was the result of a partial wind-up under the *Act*. There is nothing in the *Act*, however, that suggests that a pension plan and the related pension fund are divided into two on a partial wind-up. Various provisions of the *Act* that appear under the heading “WINDING UP”

(ss. 68–77) use the expression “**the** pension plan” or “**the** pension fund” (emphasis added) to refer to a plan that is being wound up in whole or in part or to the related pension fund. There is no indication that, from the effective date of a partial wind-up, there is more than one plan or fund.

The Group of Employees also maintained, in the alternative, that a partial wind-up causes a termination of any trust for the members of the partial wind-up group, in which case they are entitled to call for a distribution of those assets that are held in trust for them, including surplus assets. This argument also presupposes a division and termination on a partial wind-up – specifically, a division of any trust for the members of the plan and a termination of one of the successor trusts, namely that for the members of the partial wind-up group. But, once again, the *Act* does not contemplate such a result on a partial wind-up. And under trust law principles, a trust generally continues until its terms or objects have been carried out or until all the beneficiaries have agreed to modify or terminate the trust; the beneficiaries may require the trustee to transfer the trust property to them only in the event of unanimous agreement to termination (see D.W.M. Waters, *Law of Trusts in Canada*, 2d ed. (Toronto: Carswell, 1994), at pp. 961–964). In a pension plan context, the beneficiaries would include all the members of the plan and may include the employer with respect to some or all of the surplus assets.

In conclusion, the Partial Wind-Up Report filed by Monsanto was not deficient for failing to provide for an allocation and distribution of some portion of the surplus in the Plan. Whether it would have been deficient had it made no provision for the participation of the Affected



Members in any actual surplus on a full wind-up is not a question that is before us since the Partial Wind-Up Report did make such provision. If such provision is necessary, which we think is the better view, there may be some practical difficulties in contacting those affected by a previous partial wind-up on a full wind-up and in determining their precise entitlements in that event, as noted in Mr. Erlichman's dissenting reasons. Those difficulties could be addressed by amendments to the *Act* or Regulation.

Monsanto argued that there would be serious negative consequences for the pension system if this Tribunal were to support the position adopted by the Superintendent on the surplus distribution issue. Monsanto's actuarial expert testified as to these consequences. The Superintendent's actuarial expert offered a different opinion about the consequences for the pension system. In light of the conclusion we have arrived at, we do not find it necessary to decide between any conflicting aspects of the actuarial experts' evidence.

The Superintendent, in her Notice of Proposal, also put her proposed refusal to approve the Partial Wind-Up Report on the basis of a failure by Monsanto to comply with section 28(2)(q) of the Regulation (set out above) in giving its notice of partial wind-up. We are of the opinion that any deficiency in that respect was effectively remedied by the notice of this hearing, which referred specifically to the surplus distribution issue.

### **C. The Benefit Enhancements Issue**

The benefit enhancements issue can be broken down into two sub-issues. The first is whether the Benefit Enhancements amount to a payment out of the surplus of the Plan to Monsanto subject to the preconditions of the *Act* and

Regulation to the making of any such payment to an employer. The second is whether the Benefit Enhancements failed to meet the requirements of the *Act* or the common law for lack of a proportionate and equitable basis of entitlement.

#### **1. Do the Benefit Enhancements Involve a Payment of Surplus to Monsanto subject to Preconditions under the *Act* and Regulation that were not Satisfied in this Case?**

The Superintendent argued that the Benefit Enhancements provided "as part of the partial wind-up package" were funded in part by surplus to which the Affected Members had a crystallized right by virtue of the partial wind-up. She then maintained that Monsanto was the real beneficiary of the Benefit Enhancements because they enabled it to avoid paying a substantial portion of the severance that would otherwise have been payable to the older Affected Members, who qualified to receive the Benefit Enhancements. In her view, the Benefit Enhancements, therefore, amounted to a payment of surplus to Monsanto, which was not permitted by the *Act* unless Monsanto satisfied certain preconditions. In particular, it would have had to go through the surplus withdrawal procedures under the *Act* and Regulation (see s. 79(3) of the *Act* and s. 8 of the Regulation), which it had not done. The position of the Superintendent on this issue was built on her position on the surplus distribution issue – that the Affected Members had a right to participate in a distribution of surplus on the Partial Wind-Up – which is a proposition that we have rejected in Part B of these Reasons.

The Superintendent's position also turned on an underlying distinction between an enhancement of benefits under a pension plan in association with a partial wind-up and a similar





enhancement of benefits at any other time. The Superintendent conceded that Monsanto would be free to provide benefit enhancements from an ongoing plan at other times so long as there was an actuarial surplus in the Plan sufficient to cover the actuarial costs of those benefits or so long as any resulting actuarial deficiency in the Plan were to be made up.

What makes the situation any different when the benefit enhancements are associated with a partial wind-up? The Superintendent's response to this question was that the members of a partial wind-up group have an immediate crystallized right to surplus on a partial wind-up and that benefit enhancements provided shortly before a partial or full wind-up, if funded out of plan surplus, are normally considered by the Superintendent to be part of any surplus distribution proposal, if that is in the best interests of the members, in accordance with FSCO Policy No. S900-900. That policy does not apply here in a direct way, however, because there was no surplus distribution proposal, although the Superintendent argued that there should have been one. In any case, as an administrative policy, it does not have the binding force of law but would simply be persuasive in the event of any doubt about the meaning of the *Act* (see R. Sullivan, *Driedger on the Construction of Statutes*, 3d ed. (Toronto: Butterworths, 1994), at p. 471). There is no apparent basis in the *Act* or Regulation to support the alleged difference in the treatment of benefit enhancements on a partial wind-up and at other times. While the *Act* regulates plan amendments (see ss. 12-14 & 17-18), it imposes no requirements with respect to the funding of benefit enhancements effected by such an amendment where the plan assets are sufficient to cover the additional liabilities created by

the amendment. In the present case, the amendments to the Plan introducing the Benefit Enhancements were duly filed by Monsanto and registered by the Superintendent. Such registration would normally result in an immediate increase of the liabilities of the Plan, to cover the actuarial cost of the Benefit Enhancements (see para. 2.05 of the Standard of Practice for Valuation of Pension Plans of the Canadian Institute of Actuaries (January, 1994)) and a corresponding reduction in the actuarial surplus of the Plan.

If the Benefit Enhancements did not lead to an automatic reduction in surplus, but instead were to be treated as a *de facto* payment of surplus to Monsanto, Monsanto would be unable to fund those Benefit Enhancements without first making a successful surplus withdrawal application or contributing a sufficient amount to the Plan to cover the actuarial cost of the Benefit Enhancements. The former course of action would be problematic for Monsanto because of the requirement of consent from at least two-thirds of the members (see s. 8 of the Regulation). The latter course of action would not be feasible as the Plan was in an "excess surplus" position. The term "excess surplus" is commonly used to refer to the level of funding of a pension plan, in relation to plan liabilities, that would preclude the employer from making an "eligible contribution" to the plan under the *Income Tax Act* (Canada) (see s. 147.2 of the *Income Tax Act* and ss. 8501 & 8502 of the *Income Tax Regulations*). If an employer were to make a contribution to a pension plan that was not an "eligible contribution", the registration of the plan under the *Income Tax Act* would be put in jeopardy. Therefore, there are practical reasons, as demonstrated by this case, for resisting the conclusion that benefit



enhancements are to be treated differently when they are introduced in association with a partial wind-up of a pension plan.

Recognizing the practical dilemma, the Superintendent modified or clarified her position in oral argument, suggesting that Monsanto could have funded the Benefit Enhancements from the “excess surplus” in the Plan without the need for a surplus withdrawal application, although the Notice of Proposal that led to Monsanto’s Request for a Hearing by this Tribunal is not consistent with that solution. However, the concept of “excess surplus” does not have any particular significance under the *Act*. While we received evidence of the existence of “excess surplus” in the Plan, we received no evidence as to the actual amount of that surplus. The “excess surplus” to which the Superintendent said Monsanto could resort was, apparently, the amount of such surplus remaining in the Plan after the distribution of a portion of surplus to the members of the Partial Wind-Up Group, in accordance with the Superintendent’s position on the surplus distribution issue (for which, see Part B above).

While the Superintendent’s ultimate position **may** remove any substantive objection to the introduction of the Benefit Enhancements, we are of the opinion that, in any event, those Enhancements did not involve a payment of surplus to Monsanto that would have required a surplus withdrawal application should the Enhancements have been incapable of being funded from “excess surplus”. Monsanto did not actually receive any payment out of surplus and any indirect benefit that it gained from the Benefit Enhancements is speculative at best. The utilization of surplus as a source of funding for benefit enhancements does not normally

require a surplus withdrawal application. The only compelling basis for departing from that norm in this case would be if the surplus that was utilized was set aside, or was shortly to be set aside, for distribution to the Affected Members on the Partial Wind-Up, which we do not accept as being the consequence of a partial wind-up under the *Act* (see Part B above).

## **2. Did the Benefit Enhancements Fail to meet the Requirements of the *Act* or the Common Law for Lack of a Proportionate and Equitable Basis of Entitlement?**

The Superintendent argued that as the Benefit Enhancements were funded from surplus on the occasion of a partial wind-up, they should have been provided proportionately and equitably. They were not provided in that fashion, it was said, first, because only a limited number of the Affected Members received the Benefit Enhancements and, second, because the surplus that funded those Enhancements included some of the actuarial surplus in which the members of the ongoing Plan had an interest. The second reason falls away if all of the funding can be said to come from a single source – the undifferentiated actuarial surplus of the Plan. We have already concluded that the *Act* does not contemplate a division of surplus on a partial wind-up between the partial wind-up group and the remaining plan members. Therefore, we consider the Benefit Enhancements to have been funded from a single source, namely the undifferentiated surplus of the Plan.

The Superintendent relied, once again, on FSCO Policy No. S900-900, which provides that benefit enhancements introduced shortly before a partial wind-up and funded from plan surplus will normally be considered a distribution of surplus when that is in the best interests of the



members of the plan. She then argued that there is a clear intention in the *Act* that surplus be distributed proportionately, as evidenced by section 79(4), which says that a pension plan that is silent as to the payment of surplus shall be construed as requiring that surplus accrued after December 31, 1986 be distributed proportionately to plan members on a wind-up. Neither of these provisions is directly applicable in this case, the first because it relates to a surplus distribution proposal, which is not in issue here, and the second because there was no evidence as to what the Plan provides, if anything, with respect to the payment of surplus on a wind-up. At most, these provisions might be taken to establish principles that could have some relevance by analogy to the facts of this case.

When benefit enhancements are provided outside the context of a wind-up, there is no requirement in the *Act* or at common law that they be proportionate as among the members of the plan. This proposition is supported by the decisions of the Ontario Court General Division in *Anova Inc. Employee Retirement Pension Plan (Administrator of) v. Manufacturers Life Insurance Co.* (1994), 121 D.L.R. (4th) 162 (see p. 180), and *Mair v. Stelco Inc.* (1995), 9 C.C.P.B. 140 (see p. 148). Indeed, the Superintendent acknowledged, in oral argument, that if the Benefit Enhancements in this case had been funded from "excess surplus" in the ongoing Plan, they would not have to be proportionate. In our view, the Benefit Enhancements are funded from the undifferentiated surplus of the Plan and, therefore, do not attract any special requirement of proportionality simply because they are associated with a partial wind-up. It was not seriously argued that the Benefit Enhancements were inequitable apart from their lack of proportionality.

#### D. Transfer of Pensions Issue

The third issue is whether Monsanto is required to transfer out of the Plan, whether by annuity or otherwise, the assets necessary to fund pensions and deferred pensions payable to the Affected Members. In fact, Monsanto gave those members the option of leaving their pension entitlements in the Plan, as well as the various options of transferring the commuted values of their deferred pensions out of the Plan that are set out in section 42(1) of the *Act* (see also ss. 73(2) & 74(8) of the *Act*). Two-thirds of those members took up the first option. None of the other members has apparently objected to that option being made available.

The Superintendent argued that the option to leave pension entitlements in the Plan was inconsistent with the *Act* since the *Act* contemplates the distribution of the assets relating to that part of a pension plan that is to be partially wound up. Support for this was found in the definition of "partial wind-up" (in s. 1 of the *Act*), the requirement that a wind-up report set out "the methods of allocating and distributing the assets of the pension plan" (in s. 70(1)(c) of the *Act*), and the requirement that pension plan documents set out "the method of allocation of the assets of the pension plan on wind-up" (in para. 13 of s.10(1) of the *Act*).

We have already dealt with the significance of the first two of these provisions in Part B above. We indicated that the *Act's* definition of "partial wind-up" should not, by itself, determine the effect of the operative requirements of the *Act*. We also concluded that the "methods of allocating and distributing the assets of a pension plan" should be taken to refer to the assets that are in fact proposed, or in law required, to be



distributed on a partial or a full wind-up. We note that “the method of allocation of the assets” that must be included in plan documents is in relation to a “wind-up” of a pension plan, and not in relation to a wind-up “in whole or in part” of a pension plan. The latter expression is used elsewhere in the *Act* in reference to a wind-up to indicate that both forms of wind-up are meant to be covered (see ss. 68(1), 69(1), 70(1), 71(1), 72(1), 73(1), 74(1), (5) & (8), 75(1) & 77).

Monsanto argued that since the *Act* requires the administrator of a pension plan to give a member of a plan affected by a partial wind-up certain transfer options on the partial wind-up (in accordance with ss. 42(1), 73(2) & 74(8) of the *Act*), but is silent on leaving pension entitlements in the plan, the latter option can be made available to the members of the partial wind-up group. Monsanto also maintained that if that option were not open to such a member, there would be potential adverse consequences for both the employer and the members of the partial wind-up group. The employer could be faced with higher costs for providing the promised benefits because it would have to go into the market and purchase annuities on a “retail basis” and any additional costs would reduce the surplus in the ongoing plan. The members of the partial wind-up group, for their part, would forego the opportunity to participate in any future *ad hoc* increases in benefits under the pension plan. The Superintendent responded to these concerns by saying that they were, at best, arguments for a change in the law, which was not for the Tribunal to make, and that they could be addressed by an employer setting up a new pension plan for those members of a partial wind-up group who

wanted to leave their pension entitlements in a comparable plan.

There is no provision in the *Act* dealing specifically with the question of whether the members of a partial wind-up group can be given the option of leaving their pension entitlements in the plan, as they clearly could if they had terminated their employment outside the context of a wind-up. We do not think that the *Act* implicitly precludes this option. Accordingly, we conclude that Monsanto was free to give the Affected Employees the option of leaving their pension entitlements in the Plan. We take some comfort in the fact that this is a practical result for all concerned.

## E. The Legitimate Expectations Issue

The final issue is whether Monsanto had a legitimate expectation that the Superintendent would approve the Partial Wind-Up Report in light of the past practice or policy of the pension regulator in respect of similar reports with the result that the Tribunal should direct the Superintendent to approve the Partial Wind-Up Report. Put another way, the issue is whether the Superintendent was stopped from disapproving the Partial Wind-Up Report on the grounds that Monsanto had relied on the past practice or policy of the pension regulator, with the result that the Tribunal should direct the Superintendent to approve the Partial Wind-Up Report.

### 1. The Relevant Practice and Policy of the Superintendent

#### (a) On the Distribution of Surplus

During the period from November 1992 to November 1998, 156 partial wind-up reports were filed with the pension regulator (the Superintendent or her predecessor, the PCO) in respect of plans that were in a surplus position,





but where there was no proposal for the distribution of such surplus. The pension regulator neither approved nor refused to approve these reports. Section 70(2) of the *Act* provides that no payment shall be made out of a pension fund where notice of proposal to wind-up the related plan has been given, until the Superintendent has approved the wind-up report. However, this does not prevent the making of any payment out of the fund where such payment is approved by the Superintendent pursuant to section 70(3) of the *Act*. Prior to the present case, the pension regulator had never issued a notice of proposal to refuse to approve a partial wind report on the basis that surplus was not being distributed.

In a published guideline that was subsequently adopted by the Superintendent and in published clarifications of that guideline, the PCO disclosed its policy with respect to proposals for the treatment of surplus in wind-up reports. Compliance Assistance Guideline No. 4 (FSCO Policy No. W100-100) states that in a wind-up report the administrator of a pension plan "shall disclose intentions with respect to the proposed handling of surplus" (at p. 4). In a question and answer section in the PCO Bulletin of July, 1991 (vol. 2, issue 2), the latter statement, as it appeared in the version of the Guideline then in force, was clarified by the PCO as meaning that administrators are not required to state how surplus will be allocated and dealt with at the time of the report if they do not wish to deal with the issue at that time, adding that "a statement to this effect in the wind-up report is sufficient to consider the question 'handled'" (at p. 11). This position was further clarified in the PCO Bulletin of November, 1991 (vol. 2, issue 3) by reiterating that the administrator

could simply state in a wind-up report that surplus was not being dealt with at that time, but adding that the PCO **does** expect the administrator to identify the existence of the surplus and to state what its intention is. These two clarifications are reproduced in FSCO Policy No. W100-125. Monsanto's Partial Wind-Up Report appears to comply with the policy set out in this Guideline, as clarified by the PCO.

The PCO published a further policy on "Partial Wind-Up – Identification and Administration of Surplus – Compliance with PBA section 70(6)", which was subsequently adopted by the Superintendent (FSCO Policy No. S900-400). This policy directs the actuary on the partial wind-up of a pension plan to identify assets related to a partial wind-up in the same manner as the *Act* would require on a full wind-up. It also affirms that where surplus is identified as a portion of the assets related to the partial wind-up, as contemplated by various referenced provisions of the *Act* and Regulation, it is the administrator's responsibility to administer the surplus as required by the *Act* and Regulation. However, another policy on "Filing Requirements and Priorities" on the wind-up, in whole or in part, of a pension plan says that "if a decision has been made to distribute all surplus on wind-up among members... , the formula for distribution should be included in the wind-up documentation" (FSCO Policy No. W100-101, at para. 1.1). This suggests that a decision to distribute surplus on a wind-up does not have to be made. The same policy also contains the following statement:

If the plan is in a surplus position on wind-up, the administrator should indicate how the surplus will be dealt with. Generally, distribution of assets must conform with



the proposals set out in the wind-up report approved by the Superintendent. If the wind-up report does not indicate how the surplus will be dealt with, a supplement to the initial report dealing with the surplus assets will be required (at para. 3.1).

We understand this policy as simply intended to impose certain requirements in respect of a distribution of surplus assets when a decision is, in fact, made to effect such a distribution.

In our view, there was a clear and unambiguous practice and policy of the pension regulator of not insisting that the distribution of surplus be provided for, or even dealt with on a current basis, in a partial wind-up report. Other policies on the wind-up process can be reasonably understood to provide direction only when there is an actual proposal to distribute surplus on a partial wind-up, rather than indicating that there must be such a distribution on that occasion.

#### **(b) On Benefit Enhancements**

Prior to the date of the Notice of Proposal in this case, the pension regulator had never issued a notice of proposal to refuse to approve a partial wind-up report on the grounds that enhancements paid on partial wind-up were funded from surplus and, therefore, constituted a surplus distribution.

The published PCO policy on the “Allocation of Surplus Distributed to Members and Former Members on Wind-Up”, which was subsequently adopted by the Superintendent, states, in its current wording, that “the Superintendent may refuse to approve any allocation of surplus contained in a wind-up report, whether by cash or benefit enhancements, that does not protect the interests of members” pursuant to section 70(5) of the *Act* (FSCO Policy No. S900-900, at

para. 3). The policy further states that “where it is in the best interests of the members... , benefit enhancements provided shortly before a wind-up, if funded out of plan surplus, will normally be considered to be part of the surplus distribution proposal” (at para. 6). In the present case, of course, there was no surplus distribution proposal.

Another policy that relates to “Amendments for Benefit Improvements – Notice and Funding” says that the Superintendent may treat an amendment that provides benefit improvements only for specified persons or a class of members as an “adverse amendment” under section 26(1) of the *Act*, in which case notice of the amendment would usually be required to be given to all members (FSCO Policy No. B100-251, paras. 1 & 2). Monsanto, in fact, notified all the active members of the Plan in respect of the amendments introducing the Benefit Enhancements. The policy also addresses the funding of benefit improvements, stating that such improvements can be provided to “specified persons” if they are funded by a contribution from the employer unless such a contribution would not be an “eligible contribution” in the sense of the *Income Tax Act* (Canada), which was the situation in the present case (see Part C1 above).

In short, the practice of the pension regulator with respect to benefit enhancements on a partial wind-up was consistent with the practice on the distribution of surplus in that event. Such enhancements were not treated as justifying a refusal to approve a partial wind-up report because they effected a distribution of surplus or, apparently, because they might otherwise be inconsistent with a distribution of surplus called for on a partial wind-up. None of the published policies of the pension regulator were



inconsistent with this practice. Indeed, the action of the Superintendent in this particular case, in registering the Plan amendments introducing the Benefit Enhancements (see Part C above), conformed to, and did not signal any change in, the practice. Once again, in our view, the relevant practice was clear and unambiguous.

## 2. The Scope and Application of the Doctrines of Legitimate Expectations and Estoppel

### (a) The Doctrine of Legitimate Expectations

The doctrine of legitimate expectations was described by Taylor, J. in the English decision in *R. v. Secretary of State for the Home Department, ex parte Ruddock and others*, [1987] 2 All E.R. 518 (Q.B.D.) in the following terms:

... I conclude that the doctrine of legitimate expectation in essence imposes a duty to act fairly. While most of the cases are concerned... with a right to be heard, I do not think the doctrine is so confined. Indeed, in a case where ex hypothesi there is a right to be heard, it may be thought the more important to fair dealing that a promise or undertaking given by a minister as to how he will proceed should be kept. Of course, such a promise or undertaking must not conflict with his statutory duty... I accept the submission of counsel for the Secretary of State that the respondent [the Secretary of State] cannot fetter his discretion. By declaring a policy he does not preclude any possible need to change it. But then if the practice has been to publish the current policy, it would be incumbent on him in dealing fairly to publish the new policy, unless again that would conflict with his duties.

In the earlier case of *Council of Civil Service Union v. Minister for the Civil Service*, [1985] A.C.

374 (H.L.), Lord Fraser said that a "legitimate, or reasonable, expectation may arise from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue" (at p. 401). In *Ruddock*, the court found that there was a legitimate expectation arising from both such sources – an express promise in a published policy and a regular practice – although the conduct of the public authority, the Secretary of State, that was challenged in that case was found to be justified on a reasonable or rational interpretation of the policy and practice that gave rise to the legitimate expectation.

A person who invokes the doctrine of legitimate expectations must have relied to his or her detriment on a clear and unequivocal practice, policy or other promise giving rise to the expectation (see *R. v. Inland Revenue Commissioners Ex Parte Unilever Plc*, (1996), 68 T.C. 205, at p. 231 (C.A.)).

In the present case, the pension regulator had a clear and unequivocal practice and, to some extent, published policies that would reasonably lead Monsanto to believe that its Partial Wind-Up Report would not be disapproved for failure to provide for a distribution of surplus or to take account of the Benefit Enhancements as part of a distribution of surplus. Ray Mowling, the chairman and president of Monsanto, testified that Monsanto would probably have structured the severance programs for the Affected Members differently from a financial perspective if it had known the position that the pension regulator would take on the Partial Wind-Up Report. While he claimed no personal knowledge of the policies and practices of the regulator in respect of partial wind ups and benefit



enhancements in connection with such wind ups, he indicated that Monsanto essentially relied on its pension actuary, Towers Perrin, in that regard. Michael Millns of Towers Perrin, in turn, testified that his firm had used language in respect of surplus distribution in the Partial Wind-Up Report that was similar to that used in other partial wind-up reports filed with the pension regulator, which had never led to a notice of proposal to refuse to approve the partial wind-up report.

Should Monsanto now be required to distribute some portion of the surplus that was in the Plan at the effective date of the Partial Wind-Up, it appears that it would be in no position to unwind the Benefit Enhancements and to reinstate the surplus applied to fund those Enhancements. Monsanto contended that once the amendments introducing the Benefit Enhancements were registered by the pension regulator, the Benefit Enhancements constituted legal obligations that could not be unilaterally withdrawn. This contention was not disputed by any of the other parties.

We conclude that Monsanto relied, directly or indirectly, to its detriment on the relevant practice of the pension regulator in structuring the Partial Wind-Up and in providing the Benefit Enhancements, which reliance was reflected in the Partial Wind-Up Report.

### **(b) The Doctrine of Estoppel**

The decision of the Federal Court Trial Division in *Aurchem Explorations Ltd. v. Canada* (1992), 7 Admin. L. R. (2d) 168, is particularly instructive for present purposes. In that case, a mining recorder had refused to record a mining claim because it was not in accordance with the requirements of the *Yukon Quartz Mining Act*

(Canada) (the "Mining Act"). However, the recorder had a past practice of recording claims that had the same deficiencies, under the *Mining Act*, as this particular claim. The principals of the prospector whose claim was refused for recording made a judicial review application to the Federal Court to quash that refusal. In fact, the recorder had considerable discretion under section 43(1) of the *Mining Act* to waive the strict requirements of the *Act* in circumstances such as those of this case and to proceed to record a claim. Mr. Justice Strayer of the Federal Court made an order quashing the decision of the recorder to refuse the claim on the basis of the following reasoning;

... in these circumstances the [mining recorder] should be stopped from relying on the strict technical requirements of the *Act* when those requirements had been commonly and lawfully waived by the mining recorder in the past in the exercise of his discretion. The conditions for promissory estoppel are well established. First there must be a promise which is clear and unequivocal. I believe that the mining recorder by accepting, in a routine fashion, [claims staked in a particular way] has in effect promised to the prospecting community that if they stake and claim in this way their claims will not be rejected but will be the subject of a favourable exercise of discretion under subs. 43(1). There was reliance on that representation [by the prospector when he staked the rejected claim, on behalf of his principals, in the way he did]. As a result he and his principals suffered a detriment when the...mining recorder suddenly applied the strict letter of the *Act* without the benefit of the discretion typically exer-





cised under subs. 43(1)... This is not a matter of using promissory estoppel as a "sword" rather than as a "shield". It is a matter of disallowing the mining recorder from raising objections based on technical requirements of the

Act when he has through past conduct represented that such requirements would not be invoked, such representations leading prospectors to stake and file claims as they have done in the past. Estoppel could not, of course, preclude the [mining recorder] from enforcing the strict terms of the law simply because they had not been enforced in the past. But here the law leaves a discretion in the mining recorder to waive certain requirements which he has lawfully done on many occasions. This is not to say that the mining recorder was precluded from changing practice and not exercising in the same way the discretionary power provided under subs. 43(1). But, given the wide-spread practice which, according to the evidence, had been going on at least six years, it was incumbent on the mining recorder to make reasonable efforts to bring to the attention of prospectors his intention to require strict and literal compliance with the Act and not to waive those requirements in future. If he had done this, then prospectors could be expected to govern themselves accordingly and not to go into the field locating claims in accordance with past practice.

[At pp. 176-178.]

The Superintendent in the present case also has a discretion as to whether to approve a partial wind-up report that is not in strict compliance with the Act. Section 70(5) of the Act provides that:

The Superintendent may refuse to approve a wind-up report that does not meet the requirements of this Act and the regulations or that does not protect the interests of the members and former members of the pension plan (emphasis added).

Therefore, even though a partial wind-up report does not satisfy the requirements of the Act, the Superintendent is not obliged to refuse her approval. If the Superintendent were to approve such a report, she would be acting lawfully as well as in accordance with a representation to the pension community evidenced by her past practice and that of the PCO in dealing with partial wind-up reports that had the same deficiencies, in respect of its handling of surplus distribution and benefit enhancements, as were alleged in respect of Monsanto's Partial Wind-Up Report.

### (c) Potential Limitations on the Doctrines of Legitimate Expectations and Estoppel

While the doctrines of legitimate expectations and estoppel cannot preclude a public official from exercising a statutory duty (see *Lidder v. Canada (Minister of Employment and Immigration)* (1992), 6 Admin. L.R. (2d) 62, at p. 71 (Fed. C.A.)), that would not be the result of applying either doctrine in this case. The Superintendent is simply given the discretion under the Act to refuse to approve a partial wind-up report that fails to comply with the requirements of the Act. In *Aurchem*, the Federal Court declined an invitation to make a second order directing the mining recorder to record the rejected claim, even though the effect of the court's decision was that the recorder "cannot without some warning reverse the practice of the office and insist on strict compliance with certain provisions of the Act" (at p. 178). The court said that, in



the final analysis, the decision of whether or not to record the claim was that of the mining recorder within the scope of his discretionary powers. It should be remembered that this case came to the court by way of a judicial review application and not by way of an appeal. This explains the reluctance of the court to order the recording of the claim. Judicial review, unlike a typical appeal process, is not designed to allow a court to substitute its view of the right decision or the right exercise of discretion by the original decision-maker (see D.P. Jones & A. de Villars, *Principles of Administrative Law*, 3d ed. (Toronto: Carswell, 1999), [at p. 684]. This Tribunal, by comparison, has the express power, under section 89(9) of the *Act*, at or after a hearing in respect of a proposal to refuse to approve a partial wind-up report:

to direct the Superintendent to carry out or refrain from carrying out the proposal and to take such action as the Tribunal considers the Superintendent ought to take in accordance with this *Act* and the regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent.

Therefore, the Tribunal is entitled to impose its opinion as to the proper exercise of a discretionary power of the Superintendent in association with a direction to the Superintendent to refrain from carrying out a particular proposal.

The Superintendent argued that since the doctrine of legitimate expectations gives rise to procedural rather than substantive rights, it would not permit this Tribunal to find in favour of Monsanto as that would involve a conclusion that the doctrine gives Monsanto a substantive right. In *Reference re Canada Assistance Plan (Canada)* (1991), 1 Admin.

L. R. (2d) 1, the Supreme Court of Canada had this to say (at p. 32) about the effect of the doctrine of legitimate expectations:

If the doctrine of legitimate expectations required consent, and not merely consultation, then it would be the source of substantive rights...

There is no support in Canadian and English cases for the position that the doctrine of legitimate expectations can create substantive rights. It is part of the rules of procedural fairness which can govern administrative bodies. Where it is applicable, it can create a right to make representations or to be consulted. It does not fetter the decision following the representations or consultations.

Monsanto did not suggest, in this case, that its consent would be required to a change in the practice of the pension regulator or that the regulator would be precluded from implementing a change in that practice in respect of future cases, following representations or consultations on the practice. Therefore, it did not need to rely on the doctrine of legitimate expectations as the source of a substantive right. Although the rights arising from the doctrine are procedural, this does not mean that a public authority, such as the Superintendent, could remedy a failure to entertain representations or consult on a change in practice by doing so currently and applying a new policy retroactively to the prejudice of a person, such as Monsanto, who had ordered its affairs in reliance on the old practice. That would afford little respect for the reliance interest of that person and would give little meaning to the procedural right.



While prejudice to the interests of third parties may provide a reason for declining to apply the doctrine of legitimate expectations (see *Libbey Canada Inc. v. Ontario (Minister of Labour)* (1999), 42 O.R. (3d) 417, at p. 435 (Ont. C.A.)), in this case the practice of the pension regulator on which Monsanto relied was well known to others besides Monsanto. The third parties who would, arguably, be prejudiced if the doctrine were to be applied, namely the Affected Employees, cannot reasonably have expected that the pension regulator would do anything in this case but follow that practice and not disapprove the Partial Wind-Up Report. The representation from the pension regulator on which Monsanto relied to its detriment was not made exclusively to it but was made to a broader community, as in *Aurchem* (referred to above). That community was, in effect, the whole pension community, including pension members; consequently, it included the Affected Members. Some of the Affected Members, namely those who were entitled to the Benefit Enhancements, are likely to have benefited from Monsanto's reliance on the established practice of the pension regulator. We heard evidence, which was not disputed, that Monsanto would probably not have introduced the Benefit Enhancements had it known that the Superintendent would change the practice in the way she did in this case.

In conclusion, this is a proper case for applying the doctrine of legitimate expectations or, as it sometimes put, the doctrine of estoppel as it applies against a public authority.

#### (d) Disposition

In light of our conclusions, we would order the Superintendent to refrain from carrying out the

proposal contained in the Notice of Proposal and to approve the Partial Wind-Up Report. We make no order as to the costs of this proceeding but the panel will entertain written representations on that matter from any of the parties who wish to make them.

DATED at Toronto, this 14th day of April, 2000.

Colin H. H. McNairn,  
Vice Chair of the Tribunal and Chair of the Panel  
C.S. (Kit) Moore,  
Member of the Tribunal and of the Panel



## Minority Reasons

The facts in this proceeding are adequately summarized in the Majority Reasons and I adopt that summary for the purposes of these Reasons.

### The Surplus Distribution Issue

The key issue to be decided in this proceeding is whether it is necessary to distribute pension surplus on a partial wind-up in order to meet the requirements of section 70(6) of the *Pension Benefits Act* (Ontario) (the “Act”).

Section 70(6) of the *Act* says:

On the partial wind-up of a pension plan, members, former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits they would have on a full wind-up of the pension plan on the effective date of the partial wind-up.

Can those persons affected by a partial windup “have rights and benefits that are not less than the rights and benefits they would have on a full wind-up” without a distribution of surplus at the time of the partial wind-up?

In order to answer this question, it is necessary to look at the rights and benefits provided on a full wind-up. The *Act* confers special rights and benefits (not available on an individual termination) to plan members on a full wind-up, including immediate vesting, portability options and “grow-in” rights. A wind-up also “crystallizes” surplus rights, as clarified by the Supreme Court of Canada in *Schmidt v. Air Products of Canada Ltd.*, [1994] 2 S.C.R. 211.

The *Act* creates the concept of a partial wind up to extend these rights and protections to those affected by certain events involving the termination of the active membership of a significant group of a plan's members. There are at least two reasons for this legislative concept.

First, it is presumed that members of a partial wind-up group are in a similar vulnerable position to those in a full wind-up, and deserve the same protections. Second, a partial wind-up prevents an employer from maintaining the ongoing status of a plan simply to avoid the extra obligations that would result from a full wind-up, including the requirement to provide the special wind-up rights noted above, and possibly having to deal with surplus.

It is clear, when a plan is fully wound up, that the issue of surplus ownership and distribution must be dealt with. Section 8(1) of Regulation 909 (the “Regulation”) lays out two acceptable methods of dealing with surplus on full or partial wind-up. The surplus can be distributed to, or for the benefit of, members, former members and others with entitlements (excluding the employer). The Pension Commission of Ontario (the “PCO”) and the Superintendent have taken the position, in Policy S900-900, that, in this case, surplus must be distributed to each of the three groups, in a way which protects the interests of each of these groups.

Alternatively, there can be an agreement between the employer, the members' collective bargaining agent (or two-thirds of the active plan members) and former members and others with entitlements, to share and distribute surplus in some other way.

Section 70(6) contains a very broad statement extending all of the rights and benefits of a full wind-up to members affected by a partial wind-up. It says that, in effect, members affected by a partial wind-up are to be dealt with as if there had been a full wind-up at the partial wind-up date. Conceptually, this requires the division of the pension fund into two parts – assets and liabilities relating to the partial wind-up group,





and assets and liabilities relating to the ongoing group. The assets and liabilities relating to the partial wind-up group must then be dealt with as if it were a plan undergoing a full wind-up.

The assets which exceed the liabilities for the partial wind-up group constitute a surplus to which the partial wind-up group potentially have rights. The employer cannot unilaterally use that surplus to take contribution holidays or make benefit improvements, other than on the basis set out on section 8(1) of the Regulation.

There is no reason to exclude surplus rights from the rights referred to in section 70(6) of the *Act*. There is no other way in which those rights can be extended to the partial wind-up group without a resolution of the rights to surplus at the time of partial wind-up.

Monsanto proposes to maintain the rights to surplus of members affected by the partial wind-up, by allowing them to share in a future surplus distribution, if a surplus exists at the time of a future full wind-up of the plan. While such a result could conceivably be agreed to by members of the partial wind-up group following the procedures of section 8(1) of the Regulation, Monsanto cannot unilaterally dispose of the surplus rights of the partial wind-up group in this manner, and proceed to use the surplus attributable to this group arbitrarily for benefit enhancements related to a subset of the partial wind-up group.

Monsanto's proposal does not offer to members of the partial wind-up group protection of their surplus rights. A possible share of a surplus that may arise many years in the future is not the equivalent of an immediate resolution of surplus issues, and a distribution of surplus at the time of the partial wind-up.

Furthermore, postponing the issue of surplus ownership and distribution to a future full wind-up creates serious practical and legal difficulties.

On a practical level, a full wind-up of the pension plan may not happen for decades, and, as time passes, it will become increasingly difficult to locate the members of the partial wind-up group (or the beneficiaries of those who have died), many of whom would have long since severed all connections with the employer and the pension plan.

There may also be more than one partial wind-up over the course of the plan's history, and it is not at all clear how the rights to a future surplus can be equitably shared among members of different partial wind-up groups and plan members at the final wind-up. For example, if a plan has two partial wind ups prior to a full wind-up, with a surplus at one of the partial wind ups and at the full wind-up, how is surplus at the full wind-up to be shared among the members at the full wind-up and the two partial wind-up groups? Would those members affected by a partial wind-up without a surplus have any rights with respect to the surplus at full wind-up?

An even more difficult problem is the lack of a clear legal basis for this proposal. Section 8(1) of the Regulation says:

No payment may be made from surplus out of a pension plan that is being wound up in whole or in part unless,

- (a) the payment is to be made to or for the benefit of members, former members and other persons, other than an employer, who are entitled to payments under the pension plan on the date of wind-up; or



- (b) the payment is made to an employer with the written agreement of
  - (i) the employer
  - (ii) the collective bargaining agent of the members of the plan or, if there is no collective bargaining agent, at least two-thirds of the members of the plan, and
  - (iii) such number of former members and other persons who are entitled to payments under the pension plan on the date of the wind-up as the Superintendent considers appropriate in the circumstances.

At a future full wind-up of the plan, members of the partial wind-up group who exercise their transfer options under section 42 of the *Act* are no longer members, former members, or those entitled to payments. The disposition of surplus on full wind-up would be in the hands of the future employer, active members and others with entitlements at full wind-up. There is no clear basis in the *Act* for members of the partial wind-up group to pursue their rights to surplus at a future full wind-up of the plan. How can Monsanto commit to guarantee to this group potential rights to future surplus, if its own rights are not established, and could not be until a future full wind-up?

Monsanto contends that the Superintendent's proposal is unfair to ongoing members of the pension plan. In general, there is no reason to see the removal of a proportional share of assets and liabilities related to the partial wind-up group, which leaves in the plan for the ongoing group a proportional share of the assets, including surplus, as disadvantageous to the members of the ongoing group.

In this particular case, it is difficult to understand how the removal of \$3.1 million in surplus from the pension, satisfying all future claims from the partial wind-up group, is less advantageous to ongoing plan members than the Monsanto proposal, which would remove \$4.8 million from the pension surplus for pension enhancements to some of the partial wind-up group, and still maintain some future rights to surplus for the partial wind-up group as a potential future liability in the ongoing plan.

Monsanto and the Association of Canadian Pension Management presented arguments about the negative consequences for the future of the pension system if the Superintendent's position were upheld. It is an unfortunate consequence of legislative and regulatory requirements in the pension field that, in providing protections and more equitable treatment for plan members, they may make plans less attractive to employers. While this is obviously a matter of general concern for legislators, the role of the Tribunal is to interpret the legislation as it is written, having regard for the goals of the legislation. Requiring that surplus rights be dealt with on partial wind-up, though it may make defined benefit pension plans less attractive to employers, is clearly compatible with a central goal of the *Act*, namely the protection of the interests of plan members.

As for the argument that requiring surplus distribution on partial wind-up would be detrimental to future pension plan funding, it was not demonstrated that this would lead to a significant future underfunding of pension plans, negatively affecting the security of pension benefits in the future, given the constraints of actuarial and legislative standards.



## The Benefit Enhancements Issue

Section 70(5) of the *Act* gives the Superintendent authority to refuse to approve a wind-up report which “does not protect the members and former members of the pension plan”. FSCO Policy S900-900, dated February 24, 1994, says, in part,

Where it is in the best interests of the members and former members, benefit enhancements provided shortly before a wind-up, if funded out of plan surplus, will normally be considered to be part of the surplus distribution proposal.

This policy prevents an employer from arbitrarily using all of the pension surplus to meet some or all of its severance or other obligations to its terminating employees – in effect, spending the surplus for its own purposes, without having established ownership rights with respect to that surplus.

In the absence of an approved surplus sharing agreement, as provided for under section 8(1) of the Regulation, the Superintendent has the authority, under section 70(5) of the *Act*, to refuse to approve a wind-up report that proposes a disproportionate or inequitable distribution of surplus on the basis that it does not protect the interests of the members and former members of the plan.

In this case, Monsanto proposed to use the entire surplus related to the partial wind-up group (as well as some of the surplus related to the ongoing plan) to fund benefit enhancements to only 45 of the 146 members of the partial wind-up group. The Superintendent is justified in viewing this as a disproportionate and inequitable distribution of surplus and contrary to section 70(5) of the *Act*.

Monsanto argued that the members of the

partial wind-up group were not disadvantaged as their total package of severance and pension benefits was in excess of the sum of minimum statutory severance requirements and their proportional share of surplus. While there is no doubt that the Superintendent’s proposal would require a restructuring of Monsanto’s severance and retirement packages, it is not clear what the final outcome would have been for all affected members if a surplus distribution arrangement had been agreed to as provided for under section 8(1) of the Regulation, and statutory and common law severance requirements were met. In any case, it is not the role of this Tribunal to assess the overall fairness of potential alternative severance packages, but rather to deal with the pension plan and the requirements of the *Act*.

If the rights with respect to surplus of the partial wind-up group are to be protected, the requirement that benefit enhancements at full wind-up are to be fair and equitable must be extended to a partial wind-up situation. Monsanto must either distribute the surplus related to the partial wind-up group equitably among that group or reach an agreement for surplus distribution in accordance with section 8(1) of the Regulation.

## The Notice Issue

Section 28(2)(q) of the Regulation requires that each member, former member and others with entitlements be provided with the following:

if there are surplus assets, a statement of the method of distribution and, if applicable, the formula for allocation of surplus among the plan beneficiaries;

Monsanto did not provide such notice to members of the partial wind-up group, arguing that, as there was no actual surplus at the partial





wind-up, such notice was not required. In my view, as surplus rights exist, and must be dealt with, at the time of partial wind-up, Monsanto failed to meet this notice requirement.

### **The Transfer of Pensions Issue**

The Superintendent argued that all benefits from the partial wind-up group must be transferred out of the plan, either for the purchase of an annuity or one of the options (as required by section 42 of the *Act*) for transfer of commuted value, relying on the references to “distribution” of assets at various places in the *Act*. This interpretation has the virtue of consistency: the assets, including surplus, attributable to the partial wind-up group, and the plan’s obligations to that group, would be totally removed from the plan. This interpretation would lead to a duplication of the requirements on a full wind-up.

Monsanto argued that reading such a requirement into the *Act* would disadvantage both the plan and the members. The plan would be required to purchase annuities at a higher cost on the market than provided for in the plan valuation, and members would lose the option of keeping their benefits in the plan, either for the sake of convenience or the possibility of future benefit enhancements. Apparently, in light of the options presented to them, two-thirds of the Monsanto partial wind-up group have elected to keep their benefits in the plan.

I see no reason for a strict interpretation of the meaning of the word “distribution” in this instance. There is no need for a partial wind-up to duplicate in every detail a full wind-up, where there is no disadvantage to the affected members. “Distribution” on partial wind-up

need only require that assets, including surplus, related to the partial wind-up group, must be segregated from the assets related to the ongoing plan group. Individual terminating members within the partial wind-up group would retain their section 42 transfer rights, but the option of transferring accrued deferred benefits to the ongoing plan need not be precluded.

While it may turn out in many partial wind ups that all assets would indeed be removed from the plan, I see no reason to limit these options for a partial wind-up, if the rights of the affected plan members are not impaired.





## The Legitimate Expectations Issue

Monsanto argued that the failure of the Superintendent and the predecessor PCO to clearly inform employers of the requirement for surplus distribution on partial wind-up created the legitimate expectation that their partial wind-up proposals would be accepted by the Superintendent even though they made no provision for such a distribution. A failure to accept Monsanto's proposal would therefore cause Monsanto financial harm, as it had made commitments with respect to pension enhancements and severance which could not be withdrawn, and could now be required to make further payments out of plan surplus to members of the partial wind-up group.

Monsanto also argued that it would be unable to fund the promised pension enhancements without using the surplus as it had proposed since the plan has "excess surplus", which precluded Monsanto from making any additional payment into the plan that would qualify as an "eligible contribution" in the sense of the *Income Tax Act (Canada)*.

The policies of the Superintendent and the predecessor PCO have been ambiguous at best, and it had not been the practice, prior to this case, to refuse to approve a partial wind-up report on the basis that surplus issues had not been dealt with. In such circumstances, a notification to the pension community of the intent to change (or clarify) policy and practice on these matters would certainly be the preferred course of action.

While an earlier and clearer statement of the Superintendent's reading of the legislative requirements and intentions with respect to the treatment of surplus on partial wind-up would

certainly have been desirable, and Monsanto may be facing higher costs than it had earlier expected, accepting Monsanto's proposal would deny members of the partial wind-up group rights conferred on them by the *Act*. The *Act* gives members of the partial wind-up group rights with respect to surplus, and these rights cannot be dispensed with to compensate Monsanto for the lack of clarity in the past pronouncements of the Superintendent and the PCO or inconsistencies in their past practices.

Section 70(5) of the *Act* says:

The Superintendent **may** refuse to approve a wind-up report that does not meet the requirements of the *Act* and the regulations or that does not protect the interests of the members and former members of the pension plan.(emphasis added)

While there would seem to be leeway for the Superintendent to approve a report which fails in a minor or technical way, the Superintendent has a clear duty to protect the interests of plan members and former members. The disposition of surplus, in this case, involves more than a minor or technical breach. It could have a significant financial impact on affected members. Approving the Monsanto wind-up report and waiving their right to an immediate disposition of the surplus issue would stretch beyond reasonable bounds the discretion of the Superintendent.

Section 79(3)(b) of the *Act* prevents the Superintendent from consenting to payment of surplus to an employer unless "the pension plan provides for payment of surplus to the employer on the wind-up of the pension plan". As Monsanto's rights with respect to the surplus relating to the partial wind-up group have not



been established, the Superintendent cannot approve a distribution of surplus to Monsanto.

I would therefore uphold the Superintendent's refusal to accept Monsanto's partial wind up report.

DATED at Toronto, this 14th day of April, 2000.

Louis Erlichman  
Member of the Tribunal and the Panel

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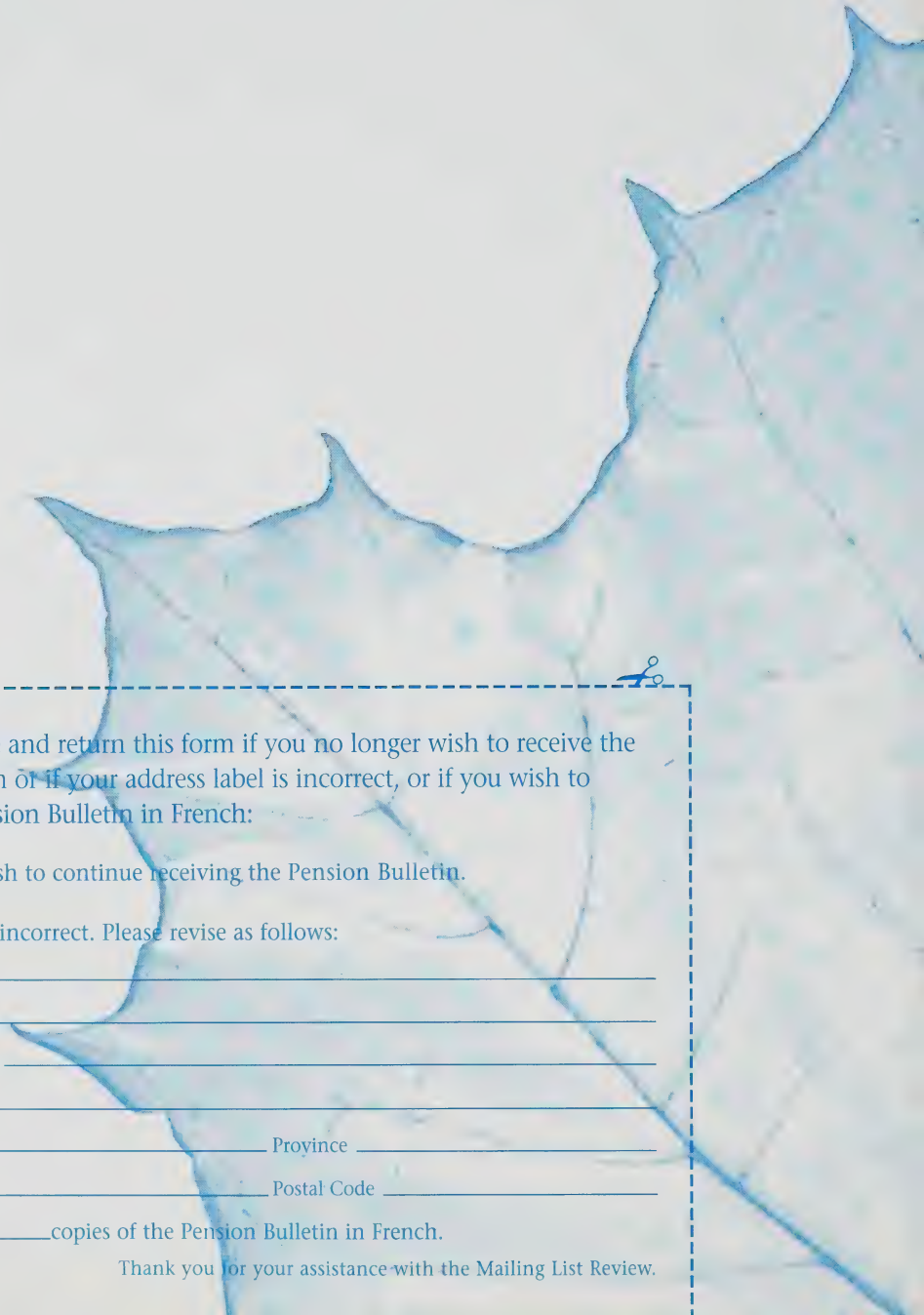
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## General Announcements

### Update on the proposed merger of FSCO and the OSC

On Friday, April 6, 2001 the Honourable James Flaherty, Minister of Finance, announced that the Government would hold a second consultation on the proposed merger of the Ontario Securities Commission (OSC) and the Financial Services Commission of Ontario (FSCO) into a single financial services regulator. On Thursday, April 12, 2001 the Minister released a consultation draft.

The consultation draft incorporates the comments received on the discussion paper, "Improving Ontario's Financial Services Regulation: Establishing A Single Financial Services Regulator," that was released for public comment last fall. While the majority of stakeholders endorsed the plan to merge the OSC and FSCO, many expressed a desire to see further details.

The consultation draft would establish a new commission to be known as the Ontario Financial Services Commission. It would have a Chair, a Commission with 18 members, a separate Pension Tribunal, and would be self-funding and have rule-making authority.

A two-month consultation is being led by John O'Toole, Parliamentary Assistant to the Minister of Finance. The deadline for submissions on the consultation draft is June 29, 2001. A copy of the consultation draft and more information on the consultation process is available on FSCO's web site at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca)

Over the past several months, FSCO has continued to meet with stakeholders to discuss specific concerns relating to representation and governance, accountability, and the extent of the rule-making under certain statutes administered by FSCO. These meetings have been very productive and informative.

Your views are important. We urge you to participate in the consultation process.





## Letter to the President of the Canadian Institute of Actuaries

January 11, 2001

David J. Oakden

President

Canadian Institute of Actuaries

360 Albert Street, Suite 820

Ottawa ON K1R 7X7

Dear Mr. Oakden,

Re: FSCO's Concerns with Actuarial Reports

At the last CIA/FSCO Annual Forum on December 14th, 2000, we shared with you and your colleagues some of FSCO's concerns with the actuarial reports filed for purposes of funding pension plans (referred to hereinafter as "reports"). Your colleagues suggested that it would be useful to disseminate this information to actuaries in the pension practice. In this regard, I am writing to outline the concerns discussed.

For the purposes of supervising the funding of defined benefit pension plans, FSCO has adopted a risk-based approach whereby certain risk assessment criteria are used to identify reports for in-depth compliance review. Over 600 reports have been selected for review since June 1999. Our review indicated that the majority of the reports were prepared in accordance with your Institute's standard of practice, and were in compliance with the *Pension Benefits Act* and the regulations made thereunder. However, a small proportion (about 10%) of the reports reviewed did contain some material compliance deficiencies.

The principal concerns can be attributed to two categories as set out below:

1. Regulatory Compliance

- The employer failed to make the required contributions within the time frame prescribed in the regulations. This was revealed in some cases by the large amount of contribution receivables indicated in the report.
- The employer failed to remit the required amount of contributions as recommended in the previous report.
- A contribution holiday was taken by the employer with amounts exceeding the amount of available surplus indicated in the previous report.
- The administrator failed to keep the filing of plan amendments up to date. This was revealed from the discrepancies between the plan provisions summarized in the report and the plan documents on FSCO's files.



- The report was filed at a date well after the prescribed time frame (with some more than a year late). Untimely filing of reports could result in improper funding of a pension plan which might impair the security of members' benefits.
- The actuary failed to observe the requirement for annual actuarial reviews where the report indicated solvency concerns.

While preparing funding valuation reports, actuaries are in a position to identify many of the compliance concerns as exemplified above. They should work with the administrators or employers to rectify any identified deficiencies prior to the filing of reports with FSCO. This would improve the overall compliance of pension plans with the *Act* and regulations, and provide better protection for the plan beneficiaries.

## 2. Actuarial Compliance

- The interest assumption used in the going concern valuation was rather aggressive and did not appear to be supportable by the past fund performance nor the long term investment return expectations. In some instances, the pension fund asset mix did not appear to be appropriate for the liability structure of the plan.
- A small number of reports still used outdated mortality tables, such as GAM 71 and GA51.
- Some plans provide benefit increases that would come into effect after the valuation date of the report. There was no provision in the actuary's funding recommendations for the cost of benefit increases.
- Disclosure or explanation of the actuarial basis used in the report did not appear to be adequate. As an example, actuarial assumptions weaker than those used in the previous valuation were used in the report but no supporting reasons for the changes were given.

To ensure compliance with actuarial standards, actuaries should, in their preparation of a report, always review the actuarial assumptions used with due regard to the plan's experience and changing circumstances. Particular attention should be given to the appropriateness of going concern economic assumptions in relation to the plan's investment policy and long term expectations, as well as to the adequacy of margin in the funding basis. Any change in the actuarial basis should be fully justified and accompanied by adequate explanation in the report. Additional information that may be helpful to users other than the plan sponsor (e.g., regulators, plan beneficiaries) in understanding the report is also desirable.

These are the main concerns we would like to bring to your attention at this time. If you would like to discuss the concerns further, please feel free to contact George Ma, Chief Actuary, at (416) 226-7785.

Yours very truly,

Dina Palozzi  
Chief Executive Officer  
and Superintendent of Financial Services





## **Pension Investments Affected by Ontario Regulation 144/00**

On March 3, 2000, the regulations under the *Pension Benefits Act* (PBA) were amended by Ontario Regulation 144/00 to require that plans registered in Ontario comply with the federal investment regulations (sections 6, 7, 7.1 and 7.2 and Schedule III of the Pension Benefits Standards Regulations, 1985, as they read on December 31, 1999) by no later than January 1, 2001.

Therefore, by January 1, 2001, all plans registered in Ontario must have established a Statement of Investment Policies and Procedures (SIP&P), the contents of which must be in accordance with the federal investment regulations. For guidance in the preparation of a SIP&P, plan administrators may wish to refer to the document entitled "Guideline for the Development of Investment Policies and Procedures for Federally Regulated Pension Plans", prepared by the Office of the Superintendent of Financial Institutions and available on their website at [www.osfi-bsif.gc.ca](http://www.osfi-bsif.gc.ca)

The SIP&P replaces the Ontario Statement of Investment Policies and Goals (SIP&G). The requirement to establish SIP&Ps now also applies to plans fully funded by fully-insured and/or deposit administration general funds contracts which were previously exempt from the requirement to prepare a SIP&G.

As stated in FSCO's November, 2000, Pension Bulletin, the SIP&P is not required to be filed with FSCO, although it is required to be reviewed by the administrator at least once a year. The SIP&P plus any amendments must be

submitted to the pension plan's advisory committee, if one exists, and to the plan's actuary, if the plan is a defined benefit plan. It must also be available for inspection by the persons listed in section 29 of the PBA and made available to FSCO if required.

Since SIP&Ps are not required to be filed, the Pooled Fund Central Registry maintained by FSCO has been terminated effective January 1, 2001. Pooled fund documents should no longer be filed with FSCO, and policies P400-300 and P400-500 are no longer in effect.

Any new investment activity after December 31, 2000, must comply with the federal investment regulations. However, section 80 of the regulations under the PBA, as recently amended by Ontario Regulation 680/00, requires that investments held on December 31, 2000, that were not compliant with the federal investment regulations be brought into compliance by no later than December 31, 2004, or disposed of by January 1, 2005. In addition, FSCO has published policy I400-801 which addresses allowable activities by these non-compliant investments and by pension plans in relation to these investments.

Policy I400-801, a description of Ontario Regulation 680/00 and a question and answer update on SIP&Ps for pension plans fully funded by fully-insured and/or deposit administration general funds contracts are published (see below) in this Pension Bulletin and are also available on FSCO's website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca)



## **Statement of Investment Policies and Procedures for Pension Plans Fully Funded by Fully-insured and/or Deposit Administration General Funds Contracts**

### **Question**

Were all pension plans registered in Ontario, including those fully funded by fully-insured and/or deposit administration general funds contracts, required to establish a written Statement of Investment Policies and Procedures (SIP&P) by January 1, 2001?

### **Answer**

Yes. All pension plans registered in Ontario, including plans fully funded by fully-insured and/or deposit administration general funds contracts, were required to establish a SIP&P by January 1, 2001.

For guidance in the preparation of a SIP&P, plan administrators may wish to refer to the document entitled "Guideline for the Development of Investment Policies and Procedures for Federally Regulated Pension Plans" prepared by the Office of the Superintendent of Financial Institutions (OSFI) and available on their website at [www.osfi-bsif.gc.ca](http://www.osfi-bsif.gc.ca)

### **Explanation**

- On March 3, 2000, sections 66 to 75 and 77 to 82 of Regulation 909 under the *Pension Benefits Act* were revoked and replaced by new sections 66 and 77 to 80.
- Among the revoked sections was the former section 80 which exempted plans fully funded by fully-insured and or/deposit administration general funds contracts from sections 66 to 82, including section 67 which dealt with the establishment of a Statement of Investment Policies and Goals (SIP&G)
- New section 78 requires that a SIP&P be established for all plans. The SIP&P must comply with the federal investment regulations (sections 6, 7, 7.1 and 7.2 and Schedule III of the Pension Benefits Standards Regulations, 1985, as they read on December 31, 1999).



## **Reminder: Summary of Contributions/Revised Summary of Contributions (Form 7)**

Effective March 3, 2000, the *Pension Benefits Act* (PBA) and Regulation 909 were amended by the *Pension Benefits Statute Law Amendment Act, 1999* and O. Reg. 144/00.

Among other changes, these amendments resulted in the addition of section 56.1 of the PBA and section 6.2 of the Regulation. These provisions require plan administrators to provide trustees of the pension fund with a Summary of Contributions / Revised Summary of Contributions (Form 7) in respect of each fiscal year of the plan that commences on or after July 1, 2000. The new Summary of Contributions / Revised Summary of Contributions (Form 7) was made available to plan administrators, trustees of pension funds and other pension stakeholders in June 2000 and copies were posted on the website of the Financial Services Commission of Ontario at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca)

The completed Summary of Contributions / Revised Summary of Contributions (Form 7) is required to be provided by the plan administrator to the trustee(s) of the pension fund (i) within 90 days after the plan is established for the first fiscal year, and (ii) within 60 days after the beginning of the second fiscal year of the plan and each subsequent fiscal year of the plan. If the completed Summary of Contributions / Revised Summary of Contributions (Form 7) is not provided to the trustee(s) of the pension fund within 30 days after the prescribed time, the Superintendent of Financial Services must be notified.

Because most pension plan fiscal years correspond to the calendar year, most plan administrators should already have provided the trustees of their pension funds with completed copies of the Summary of Contributions / Revised Summary of Contributions (Form 7). Trustees of pension funds who do not receive copies of the completed form within the prescribed time limit must notify the Superintendent so appropriate action can be taken.

The Summary of Contributions / Revised Summary of Contributions (Form 7) is intended to ensure that trustees of pension funds have the information they require to effectively monitor required contributions. The summary of contributions provisions in the PBA and Regulation do not apply to multi-employer pension plans described in section 49.1 of the Regulation.



## Pension Plans Branch – staff changes

Larry Martello has retired and his allocation has been taken over by Gino Marandola. Chantal Laurin has assumed Clifford Amilcar's allocation and is also PPB's Designated Bilingual Pension Officer.

Tom Golfetto has been appointed Sr. Manager, Operations, in place of Nardeo Sham who has assumed other responsibilities with FSCO.

## Contacts for Plan Specific Enquiries

### Pension Plan Allocations

Name	Title	Telephone #	Allocation Alpha Range
Jaan Pringi	Senior Pension Officer	416-226-7826	
Gulnar Chandani	Pension Officer	416-226-7770	#'s-Asc
Penny McIlraith	Pension Officer	416-226-7822	Asd-Bt
Tim Thomson	Pension Officer	416-226-7829	Bu-Cd
Irene Mook-Sang	Pension Officer	416-226-7824	Ce-Cz
Lynda Ellis	Senior Pension Officer	416-226-7809	
Vacant	Pension Officer	See Note 1	En-Gkn
Calvin Andrews	Pension Officer	416-226-7768	Gko-H
Stanley Chan	Pension Officer	416-226-7806	I-King
Vacant	Pension Officer	See Note 1	Kinh-Mark
Gino Marandola	Senior Pension Officer	416-226-7820	
Jeff Chuchman	Pension Officer	416-226-7807	D-Em
John Graham	Pension Officer	416-226-7774	Marl-Nes
David Allan	Pension Officer	416-226-7803	Net-Pep
Vacant	Pension Officer	See Note 1	Peq-Rob
Rosemin Jiwa-Jutha	Senior Pension Officer	416-226-7816	
Todd Hellstrom	Pension Officer	416-226-7814	Roc-Sons
Kent Wootton	Pension Officer	416-226-7812	Sont-The Drop
Kathy Carmosino	Pension Officer	416-226-7823	The Drop-Unicorp
Chantal Laurin	Pension Officer	416-226-7808	Unicorp-Z

Note 1: Please contact the Senior Pension Officer of this team for information on plans that fall under this Allocation.





## Hearings/Court Matters

### 1. ENFORCEMENT MATTERS

Charges laid under the *Pension Benefits Act*

#### i. Denning Bros. Funeral Home Limited

Denning Bros. Funeral Home Limited was charged under the *Pension Benefits Act* with failing to file a financial statement in respect of the Pension Plan for Employees of Denning Bros. Funeral Home Limited.

On July 25, 2000, the company pleaded guilty to this charge. The Crown asked for a fine of \$500, citing the facts that: it was a first offence; it was a small pension plan with one member (the owner); other filings were up-to-date; and the financial statement in question had been filed by the time of trial. The Ontario Court of Justice sentenced the company to a fine of \$600 plus a victim surcharge. The Ontario Court of Justice emphasized that it was very important to file a financial statement, and such omissions could not be blamed on oversight. The company was given 15 days to pay the fine.

#### ii. Dominion Beauty Supplies Limited

Dominion Beauty Supplies Limited was charged under the *Pension Benefits Act* with failing to file a financial statement for two separate years and failing to file an annual information return in respect of the Retirement Benefit Plan for the Employees of Dominion Beauty Supplies Limited.

On September 12, 2000, the company pleaded guilty to all of the charges and the Ontario Court of Justice sentenced the company to a fine of \$100 for failing to file the financial statement for the fiscal year ending December 31, 1997 plus a victim surcharge; \$200 for failing to file the financial statement for the fiscal year ending December 31, 1998 plus a victim surcharge; and \$100 for failing to file the annual information return plus a victim surcharge. The company was given 60 days to pay the fines.

#### iii. Can-Rad Beauty Limited

Can-Rad Beauty Limited was charged under the *Pension Benefits Act* with failing to file a financial statement for two separate years and for failing to file an annual information return for two separate years in respect of the Supplemental Pension Plan for Employees of Can-Rad Beauty Limited.

On September 12, 2000, the company pleaded guilty to all of the charges and the Ontario Court of Justice sentenced the company to a fine of \$100 for failing to file a financial statement for the fiscal year ending June 30, 1998 plus a victim surcharge; \$200 for failing to file a financial statement for the fiscal year ending June 30, 1999 plus a victim surcharge; \$100 for failing to file the annual information return for the fiscal year ending June 30, 1998 plus a victim surcharge; and \$200 for failing to file the annual information return for the fiscal year ending June 30, 1999 plus a victim surcharge. The company was given 60 days to pay the fines.

#### iv. Kelsey-Hayes Canada Ltd.

Kelsey-Hayes was charged under the *Pension Benefits Act* with failing to file financial statements and annual information returns in respect of its Non-Contributory Pension Plan for Employees of the Windsor Division of Kelsey Hayes Canada Ltd. (the "Hourly Plan") and the Retirement Income Plan for Salaried Employees (the "Salaried Plan").

On November 7, 2000, the company pleaded guilty to a charge of failing to file a financial statement in respect of the salaried plan. It also pleaded guilty to two charges of failing to file annual information returns in respect of the Hourly Plan. The Ontario Court of Justice sentenced the company to a fine of \$1000 for failing to file a financial statement in respect of the Salaried Plan plus a victim surcharge. The Ontario Court of Justice sentenced the company to a fine of \$5000 for each charge of failure to file an



annual information return in respect of the Hourly Plan plus a victim surcharge.

#### **v. Pillsbury Canada Inc.**

Pillsbury Canada Limited was charged under the *Pension Benefits Act* with failing to file a financial statement for two separate years and failing to file an actuarial valuation in respect of The Pension Plan of Pillsbury Canada Inc., Midland Union Employees.

On November 7, 2000, the company pleaded guilty to two charges – one charge for failure to file a financial statement and one charge for failure to file an actuarial valuation. The Ontario Court of Justice sentenced the company to a fine of \$1000 for failing to file a financial statement and \$5000 for failing to file an actuarial valuation plus a victim surcharge for each offence.

#### **vi. Dots & Pixels Inc.**

Dots & Pixels Inc. was charged under the *Pension Benefits Act* with failing to file various documents including annual information returns and financial statements in respect of the Dots & Pixels Inc. Employee Retirement Plan.

Due to a technicality the charges were stayed. An appeal was filed and heard on January 29, 2001. The appeal was rejected and FSCO has decided not to take any further action.

#### **vii. 1085090 Ontario Limited**

108590 Ontario Limited was charged under the *Pension Benefits Act* with failing to file an annual information return and an actuarial valuation.

Due to a technicality the charges were stayed. An appeal was filed and heard on January 29, 2001. The appeal was rejected and FSCO has decided not to take any further action.

#### **viii. Smithers-Oasis Canada Ltd.**

Smithers-Oasis Canada Ltd. was charged under the *Pension Benefits Act* with failing to file an annual information return for two separate years and for failing to file a financial statement in

respect of The Pension Plan for Employees of Smithers-Oasis Canada Ltd.

Due to a technicality the charges were stayed. An appeal was filed and heard on January 29, 2001. The appeal was rejected and FSCO has decided not take any further action.

#### **ix. Microcolor Dispersions Ltd.**

Microcolor Dispersions Ltd. and its owner, in his personal capacity, were charged under the *Pension Benefits Act* with non-remittance of employer and employee contributions to the Retirement Plan for the Employees of Microcolor Dispersions Ltd.

On February 23, 2001, the company and the owner pleaded guilty to the charges. The Ontario Court of Justice imposed a probation order against the owner personally. He is required to pay the full amount outstanding, plus interest, into the plan, over a two-year period. The Ontario Court of Justice sentenced the company to a fine of \$500 plus a victim surcharge.

#### **x. Carlo Gavazzi (Canada) Inc.**

Carlo Gavazzi (Canada) Inc. was charged under the *Pension Benefits Act* with failing to file a financial statement for four separate years and for failing to file an annual information return in respect of the Pension Plan for Employees of Carlo Gavazzi (Canada) Inc.

On February 28, 2001, the company pleaded guilty to all five charges and the Ontario Court of Justice sentenced the company to a fine of \$500 plus a victim surcharge for each offence.

#### **xi. The Raxlen Clinic**

The Raxlen Clinic was charged under the *Pension Benefits Act* with failing to file a financial statement for three separate years and for failing to file actuarial valuations for three separate three-year periods in respect of the Supplemental Pension Plan for Employees of The Raxlen Clinic.

On September 26, 2000, the company entered a



plea of not guilty. A trial was scheduled for March 21, 2001.

On February 28, 2001, three of the partners of Raxlen Clinic were charged under the *Pension Benefits Act* with failing to file a financial statement for three separate years in respect of the Supplemental Pension Plan for Employees of The Raxlen Clinic. The first court appearance for each of the defendants was scheduled for March 21, 2001.

On March 21, 2001, the defendants requested and the Ontario Court of Justice granted an adjournment of the trial of the Raxlen Clinic.

On April 3, 2001, the trial was scheduled for March 14, 2002.

## **xii. George Cluthe Manufacturing Ltd. and its officers/directors**

George Cluthe Manufacturing Ltd. and the officers of the company in their personal capacity were charged with failure to remit employer and employee contributions to the Pension Plan of the George Cluthe Manufacturing Ltd.

On April 5, 2001, four officers of the company pleaded guilty. Two of the officers were ordered to pay restitution of part of the outstanding amount and did so immediately. One of the officers was placed on probation for two years with a condition that he make restitution. The fourth officer was sentenced on May 8, 2001. He was ordered to pay restitution of part of the outstanding amount.

"Weavexx Plan"), who wanted to set aside the Superintendent's August 1997 consent to a transfer of assets from the Weavexx Plan to the BTR Pension Plan for Canadian Employees (the "BTR Plan"). The Court granted the application on May 30, 2000, setting aside the consent on the grounds that the Superintendent of Pensions had exceeded his jurisdiction in failing to consider the issues of surplus, trust, and a requested partial wind up of the Weavexx Plan.

On November 16, 2000, the Court issued an Addendum finding that the return of assets to the Weavexx Plan was not to be the subject of a Financial Services Tribunal hearing. The Court also found that any decision made by the Superintendent of Financial Services with respect to the requested partial wind up was to be referred to the tribunal for a hearing. Finally, the Court awarded the applicants costs in the sum of \$54,294.06.

Both the Superintendent of Financial Services and BTR Inc. sought leave to appeal these decisions. On February 26, 2001, the Ontario Court of Appeal granted leave, ordering that this appeal be heard together with the appeal in Colgate-Palmolive. No date has been set yet.

## **2. COURT MATTERS**

### **i. Retirement Income Plan for Salaried Employees of Weavexx Corp. Registration No. 264663**

On November 29, 1999, the Superior Court of Justice – Ontario Divisional Court heard a judicial review application brought by a group of former members of the Retirement Income Plan for Salaried Employees of Weavexx Corp. (the





## **ii. Colgate-Palmolive Canada Inc. Pension Plan for Salaried and Non-Union Hourly Employees**

On November 17, 2000, the Superior Court of Justice – Ontario Divisional Court heard a judicial review application brought by a group of former members of the Colgate-Palmolive Canada Inc. Pension Plan for Salaried and Non-Union Hourly Employees (the “Colgate Plan”), who wanted to set aside the Superintendent of Pensions’ December 1995 consent to a transfer of assets from the Bristol-Myers Canada Inc. Retirement Income Plan (the “Bristol-Myers Plan”) to the Colgate Plan. The applicants also wanted the Superintendent’s August 1994 approval of a partial wind up report filed by the Colgate Plan set aside.

On November 29, 2000, the Court released its decision, finding that the applicants as members of the importing pension plan had no right to object to the transfer; any right to object would have happened when the amendment to the Colgate Plan respecting the transfer was filed. The Court also found that there was no evidence to support a partial wind up involving additional former members of the Colgate Plan.

The applicants applied for leave to appeal. On February 26, 2001, the Ontario Court of Appeal granted leave, ordering that this appeal be heard together with the Weavexx appeal. No date has been set yet.





## Legislative Changes/Regulatory Policies

### Ontario Regulation 680/00

Effective December 21, 2000, Ontario Regulation 680/00 amended Regulation 909 made under the *Pension Benefits Act* to:

- extend the application of the “surplus sharing” provisions in section 8 of Regulation 909 until December 31, 2001;
- amend subsection 80(2) of Regulation 909 to require that any investment of a pension fund that does not meet the requirements of the federal investment regulations before January 1, 2005, be disposed of by that date; and
- correct a typographical error in subsection 89(1) of Regulation 909.

The amendment to subsection 89(1) of Regulation 909 ensures that the provisions relating to financial hardship unlocking are accurate and complete.

A copy of Ontario Regulation 680/00 is available on FSCO's website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca)

The amendment to subsection 8(3) of Regulation 909 was necessary because the existing provisions regarding withdrawal of surplus on plan wind up were scheduled to expire on December 31, 2000. In conjunction with this amendment, the Minister of Finance announced that in early 2001 the Government will hold a public consultation on new surplus sharing rules.

The amendment to subsection 80(2) of Regulation 909 stems from Ontario's adoption of the federal investment regulations on March 3, 2000. The amendment is intended to help plans implement a smooth transition to full compliance with the federal investment regulations by January 1, 2005.



Financial Services Commission of Ontario  
Commission des services financiers de l'Ontario

SECTION:	Annuities
INDEX NO.:	A600-951
TITLE:	Mortality Tables and Sex Discrimination - PBA s. 52 - Regulation 909 s. 21(3)
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	January 1, 2001 (FSCO website)
EFFECTIVE DATE:	January 1, 2001
REPLACES:	A600-950

This policy replaces A600-950 ("Mortality Tables and Sex Discrimination, O. Reg. 708/87, ss. 18(3)") as of the effective date of this policy.

*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.*

**When funds are transferred from a locked-in retirement account, life income fund or locked-in retirement income fund for the purchase of a life annuity, can sex differentiated mortality tables be used in the calculation of the annuity?**

Subsection 21(3) of the Regulation specifically states that "an immediate or deferred life annuity that is purchased with funds from a life income fund, locked-in retirement income fund or locked-in retirement account shall not differentiate on the basis of the sex of the beneficiary

if the commuted value of the pension benefit that was transferred into the life income fund, locked-in retirement income fund or locked-in retirement account was determined in a manner that did not differentiate on the basis of sex."

Under section 52 of the PBA, discrimination on the basis of sex is prohibited in the determination of benefits and eligibility conditions for those benefits in relation to employment after December 31, 1986. As a result, only annuity factors that do not differentiate on the basis of sex of the member may be used in relation to employment after that date.

For employment up to December 31, 1986, however, benefits and eligibility conditions for those benefits may be determined on a sex-distinct basis. If the commuted value of benefits related to employment up to December 31, 1986 have been determined on a sex-distinct basis, the annuity factors may also differentiate on the basis of sex.



Financial Services Commission of Ontario  
Commission des services financiers de l'Ontario

**SECTION:** Investment of Pension Funds

**INDEX NO.:** I400-800

**TITLE:** Compliance with Federal Investment Regulations or  
Ontario Investment Rules  
- Regulation 909, ss. 77(4) and 77(5), as amended

**APPROVED BY:** Superintendent of Financial Services

**PUBLISHED:** November 2000

**EFFECTIVE DATE:** March 3, 2000

**EXPIRY DATE:** December 31, 2000

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During the period March 3, 2000 to December 31, 2000, subsections 77(4) and 77(5) of Regulation 909 as amended by Ontario Regulation 144/00 (the "Regulation") allow the assets of pension plans to be invested in accordance with either the federal investment regulations (sections 6, 7, 7.1 and 7.2 and Schedule III of the Pension Benefits Standards Regulations, 1985 made under the *Pension Benefits Standards Act*, 1985 (Canada) as of December 31, 1999) or the Ontario investment rules (sections 66 to 82 of Regulation 909 made under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as of December 30, 1999).

If a plan decides that its investments should be subject to the federal investment regulations prior to January 1, 2001, it must establish an effective date for the changeover to the federal investment rules. Prior to this date, **all** investments must comply with the Ontario investment rules; after that date, except as permitted by section 80 of the Regulation and policy I400-801 respecting non-compliant investments, **all** investments must comply with the federal investment regulations.



Financial Services Commission of Ontario  
Commission des services financiers de l'Ontario

**SECTION:** Investment of Pension Funds

**INDEX NO.:** I400-801

**TITLE:** Transitional Investment Rules  
- Regulation 909, s.79 and 80, as amended

**APPROVED BY:** Superintendent of Financial Services

**PUBLISHED:** November 2000

**EFFECTIVE DATE:** March 3, 2000

**EXPIRY DATE:** January 2, 2005

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## Background

The general principle for pension fund investments during the transition from the Ontario investment rules (sections 66 to 82 of Regulation 909 made under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as of December 30, 1999) to the federal investment regulations (sections 6, 7, 7.1 and 7.2 and Schedule III of the Pension Benefits Standards Regulations, 1985 made under the *Pension Benefits Standards Act*, 1985 (Canada) as of December 31, 1999) through the period from January 1, 2001 to January 1, 2005 (the "transition period") is that "beginning on January 1, 2001, the assets of every pension plan shall be invested in accordance with the federal investment regulations" (section 79 of Regulation 909, as amended). However, section 80 of Regulation 909 acknowledges that investments held on January 1, 2001 that complied with the Ontario investment

rules but are not compliant with the federal investment regulations may exist during the transition period. Investments that meet this description shall be referred to in the remainder of this policy as "non-compliant investments".

## FSCO Policy Respecting Non-compliant Investments

All existing activities as of January 1, 2001\* and activities made in accordance with binding commitments made prior to January 1, 2001\* either by pension plans with non-compliant investments or by the non-compliant investments may continue until January 1, 2005. Any new activities after December 31, 2000\*\* with or by non-compliant investments must be in compliance with the federal investment regulations.





## Examples

### *1. Investing in non-compliant investments*

(a) Only additional investments and loans, or transfers of existing funds to a non-compliant investment, for which a binding commitment was made prior to January 1, 2001\* are permitted.

(b) Self-directed transfers after January 1, 2001\* by a defined contribution pension plan member to a non-compliant vehicle, other than those satisfying a binding commitment made prior to January 1, 2001\*, are not allowed.

### *2. Non-compliant activities undertaken by subsidiaries\*\*\**

During the transition period, subsidiaries may continue non-compliant activities arising from binding commitments made prior to January 1, 2001\* in accordance with the Ontario investment regulations. All new activities after December 31, 2000\*\* must comply with the federal investment regulations.

### *3. Non-compliant subsidiaries\*\*\**

A non-compliant subsidiary (such as a third or lower tier subsidiary as described in clauses 12(1)(h), 13(1)(i) and 14(1)(g) of Schedule III of the federal investment regulations, or an investment corporation not in compliance with any of clauses 14(c) to 14(f) of Schedule III) may continue with activities associated with binding commitments entered into prior to January 1, 2001\*, but cannot subsequently undertake any new activities.

These examples are not intended to address all transitional issues that may arise. If there is an investment issue relating to the transitional period for which this policy does not provide guidance, please contact FSCO.

\*January 1, 2001 means either January 1, 2001 or the date that a pension plan adopts the federal investment regulations if prior to January 1, 2001.

\*\*December 31, 2000 means either December 31, 2000 or the date one day prior to the date that a pension plan adopts the federal investment regulations, if prior to December 30, 2000.

\*\*\*Subsidiaries are real estate, resource or investment corporations (as defined in clause 1 of Schedule III) in which the plan owns securities to which are attached more than 30% of the votes that may be cast to elect the directors of the corporation.



Financial Services Commission of Ontario  
Commission des services financiers de l'Ontario

**SECTION:** Life Income Fund/Locked-In Retirement Account

**INDEX NO.:** L050-657

**TITLE:** 2001 LIF Maximum Withdrawal Amount Table

**APPROVED BY:** Superintendent of Financial Services

**PUBLISHED:** December 2000

**EFFECTIVE DATE:** January 1, 2001

The attached table has been prepared by the Financial Services Commission of Ontario (FSCO). Additional copies of this table and copies of articles published by FSCO about the Ontario LIF are available on FSCO's website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca), or may be picked up in person on the 4th floor, 5160 Yonge Street, North York, Ontario.

by the end of the year in which the planholder attains 80 years of age.)

Percentages shown must be prorated for the initial fiscal year if less than twelve months. Part of a month is treated as a full month.

### **Interest assumptions used in table below:**

- (1) 6.00%, which represents the *greater* of the CANSIM B14013 rate for November 2000 (5.63%) and 6.00% for the first 15 years, and
- (2) 6.00% for the years remaining to the end of the year in which the planholder attains 90 years of age. (Assumption to age 90 is for the purpose of maximum withdrawal calculation only. The balance of a LIF must be used to purchase a life annuity



## 2001 Maximum Annual Withdrawal Amount Table for an Ontario Life Income Fund (LIF)

Age at January 1, 2001	New Age During 2001	Years to End of Year Age 90 is Attained	Maximum Withdrawal as a Percentage of the LIF Balance as at January 1, 2001*
48	49	42	6.19655%
49	50	41	6.23197%
50	51	40	6.26996%
51	52	39	6.31073%
52	53	38	6.35454%
53	54	37	6.40164%
54	55	36	6.45234%
55	56	35	6.50697%
56	57	34	6.56589%
57	58	33	6.62952%
58	59	32	6.69833%
59	60	31	6.77285%
60	61	30	6.85367%
61	62	29	6.94147%
62	63	28	7.03703%
63	64	27	7.14124%
64	65	26	7.25513%
65	66	25	7.37988%
66	67	24	7.51689%
67	68	23	7.66778%
68	69	22	7.83449%
69	70	21	8.01930%
70	71	20	8.22496%
71	72	19	8.45480%
72	73	18	8.71288%
73	74	17	9.00423%
74	75	16	9.33511%
75	76	15	9.71347%
76	77	14	10.14952%
77	78	13	10.65661%
78	79	12	11.25255%
79	80	11	11.96160%

\*The maximum annual withdrawal amount percentage is calculated on the basis of a twelve-month fiscal year to December 31, 2001, using the interest assumptions on above.



## **CORRECTION TO SURPLUS POLICY S900-509**

Schedule II, appended to the revised surplus application policy S900-509 and published in the English-language version of the November 2000 issue of the FSCO Pension Bulletin, contained an error. A corrected version of the "Certification of Compliance with Surplus Requirements of Other Jurisdictions" is reproduced on the following page. This corrected Schedule II, to be signed by the Applicant, the Applicant's Agent or an Authorized Signing Officer, should accompany any application in English by an employer for payment of surplus from a wound up plan made on or after April 1, 2001.





## SCHEDULE II

### Certification of Compliance with Surplus Requirements of Other Jurisdictions

- DATE:** *Enter the date of the surplus application.*
- EMPLOYER:** *Provide the correct legal name of the employer making the surplus application.*
- PENSION PLAN:** *Provide the full registered name of the pension plan and the registration number.*
- APPLICANT:** *Provide the name, title and business address of the corporate officer authorized to act on the employer's behalf. (Unless otherwise indicated in the surplus application, all communication from the Superintendent and staff of FSCO will be directed to the agent or counsel who files the surplus application on the applicant's behalf.)*

---

#### I Certify to the Superintendent of Financial Services that:

- (a) I, the individual making this certification, am the applicant or the agent or authorized officer of the applicant;
- (b) The application affects members, former members or other persons with employment in a jurisdiction other than Ontario (the "Affected Members");
- (c) I am aware of, or have consulted with professionals who have advised me of, the requirements of the laws applicable to surplus distribution of the jurisdictions of the Affected Members, and I have reviewed the application in order to determine whether it complies with such laws;
- (d) I certify that, to the best of my knowledge and belief, based on the information and advice provided me, including that referred to herein, this application complies with the requirements for surplus distribution of those jurisdictions outside of Ontario with respect to Affected Members.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(day) (month) (year)

\_\_\_\_\_  
*Signature of Applicant or Applicant's Agent or Authorized Signing Officer*

\_\_\_\_\_  
*Name of Applicant or Applicant's Agent or Authorized Signing Officer (printed)*

\_\_\_\_\_  
*Address of Applicant or Applicant's Agent or Authorized Signing Officer (printed)*

*It is an offence under the Criminal Code, R.S.C. 1985, c. C-46, as amended, for anyone to knowingly make a false document with the intent that it be acted on as genuine.*



## Superintendent of Financial Services

### Appointment of Administrators – Section 71 of the PBA

1. The Standard Life Assurance Company, as the Administrator of the Pension Plan for William H. Kaufman Inc. (Registration No. 0999631) effective immediately.

DATED at Toronto, Ontario, this 9th day of November, 2000.

2. The Standard Life Assurance Company, as the Administrator of the Pension Plan for the employees of Kaufman Footwear, a Division of William H. Kaufman Inc. (Registration No. 0340349), effective immediately.

DATED at Toronto, Ontario, this 9th day of November, 2000.

3. The Standard Life Assurance Company, as the Administrator of the Pension Plan for the employees of Kaufman of Collingwood, The Furniture Division of William H. Kaufman Inc. (Registration No. 0340091), effective immediately.

DATED at Toronto, Ontario, this 9th day of November, 2000.

4. Arthur Andersen Inc., as the Administrator of the Retirement Plan for the Employees of Alloy Wheels International (Canada) Ltd. (Registration No. 1036029), effective immediately.

DATED at Toronto, Ontario, this 2nd day of February, 2001.

5. The Manufacturers Life Insurance Company, as the Administrator of the Pension Plan for Wylie Press, a Division of The Johnstone Group Inc. (Registration No. 0324335), effective immediately.

DATED at Toronto, Ontario, this 11th day of January, 2001.

6. The Manufacturers Life Insurance Company, as Administrator of the Pension Plan for Employees of Auto-Administrator Int'l Inc. (Registration No. 1035138), effective immediately.

DATED at Toronto, Ontario, this 4th day of October, 2000.

7. Buck Consultants Limited, as the Administrator of the Mutual/Hadwen Imaging Technologies Inc. Pension Plan (Registration No. 286401), effective immediately.

DATED at North York, Ontario, this 10th day of August, 2000.

8. London Life Insurance Company, as the Administrator of the Retirement Plan for the Employees of Murphy Distributing Ltd. (Registration No. 512137), effective immediately.

DATED at Toronto, Ontario, this 23rd day of May, 2000.



## Notices of Proposal to Make an Order

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the “*Act*”);

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to sections 87 and 89 of the *Act*, respecting the **Pension Plan for Hourly Employees of Penberthy Canada Products, Inc., St. Catharines, Ontario, Registration No. C-15244** (the “*Plan*”);

TO: Penberthy Canada  
Products, Inc.  
P.O. Box 1129  
Fonthill, ON  
L0S 1E0

Attention: Leonard Wright  
General Manager  
Administrator

## NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under sections 87 and 89 of the *Act*.

## PROPOSED ORDER

I PROPOSE TO ORDER Penberthy Canada Products, Inc. (the “Administrator”) to pay to Mrs. Lillian Hambling the survivor pension benefits to which she is entitled as a consequence of her deceased husband, Mr. Alfred Hambling, having elected survivor pension benefits. The Administrator is to pay to Mrs. Lillian Hambling the survivor benefits to which she is entitled in the following manner:

1. within thirty (30) days from the date of my Order, make a lump sum payment to Mrs. Lillian Hambling equal to the total amount of survivor pension benefits owing to her for the period between the date of Mr. Alfred

Hambling's death to the date of this Notice, with interest at the “prejudgment interest rate” as defined in section 127 of the Courts of Justice Act, R.S.O. 1990, c. C.43 calculated from the date of Mr. Alfred Hambling's death; and

2. ensure that the survivor pension benefits to which Mrs. Lillian Hambling is entitled are paid to her on an ongoing basis from the date of this Notice until her death.

I ALSO PROPOSE TO REFUSE TO APPROVE the wind up report dated October 1993 on the wind up of the Plan as at September 30, 1993 (the “Report”).

I PROPOSE TO MAKE THIS ORDER AND THIS REFUSAL FOR THE FOLLOWING REASONS:

1. Mr. Alfred Hambling was married to Mrs. Lillian Hambling. Mr. Alfred Hambling was entitled to pension benefits in respect of the Plan.
2. In or about 1973, Mr. Alfred Hambling retired and began receiving monthly pension payments.
3. Mr. Alfred Hambling elected a survivor pension benefit. The survivor pension benefit was to be 55% of the monthly pension paid to the member, in this case, Mr. Alfred Hambling, at the time of the member's death and was to be paid on a monthly basis during the continued lifetime of the member's surviving spouse after the death of the member.
4. A notice from John Wood Mfg. Ltd. to Montreal Trust Company confirms that Mr. Alfred Hambling elected a survivor pension benefit. This notice indicates that effective February 1, 1979 a monthly pension of \$155.64 and a survivor pension benefit of \$85.60 were payable in respect of Mr. Alfred Hambling's pension benefit.





5. Mr. Alfred Hambling died in or about 1994. At the time of his death, he was married to Mrs. Lillian Hambling.
6. A document entitled "Penberthy Canada Products, Inc. Statement of Benefit Payments and Other Disbursements for the Period January 1, 1993 to December 31, 1993" in respect of the Plan indicates that monthly pension payments of \$168.62 were being made to Mr. Alfred Hambling. Therefore, after Mr. Alfred Hambling's death, Mrs. Lillian Hambling was entitled to receive a survivor pension benefit of \$92.74 a month for the rest of her life.
7. The Administrator has not made any payments to Mrs. Lillian Hambling in respect of her entitlement to survivor pension benefits.
8. Subsection 19(3)(a) of the *Act* provides that the pension plan administrator is to ensure that the pension plan and pension fund are administered in accordance with the filed documents in respect of which the Superintendent has issued an acknowledgement of application for registration or a certificate of registration, whichever is issued later.
9. Subsection 87(2)(a) of the *Act* provides that the Superintendent may make an order under section 87 of the *Act* if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or pension fund is not being administered in accordance with the *Act*, the regulations or the pension plan. Subsection 87(1) of the *Act* provides that the Superintendent may, by written order, require an administrator or any other person to take or refrain from taking any action in respect of a pension plan or pension fund in the circumstances mentioned in subsection 87(2) of the *Act* and subject to section 89 of the *Act*.
10. Subsection 70(1)(a) of the *Act* requires the administrator of a pension plan that is to be wound up to file a wind up report that sets out the assets and liabilities of the Plan. Subsection 70(1)(b) of the *Act* requires the administrator of a pension plan that is to be wound up to file a wind up report that sets out the benefits to be provided under the pension plan to members, former members and other persons.
11. Subsection 70(5) of the *Act* provides that the Superintendent may refuse to approve a wind up report that does not meet the requirements of the *Act* and the regulations or that does not protect the interests of the members and former members of the pension plan.
12. In July 1994, the Superintendent approved the Report on the condition that the employer fund the deficit identified in the Report by way of an immediate lump sum payment.
13. However, contrary to ss.70(1)(a) and 70(1)(b) of the *Act*, the Report contains an error in respect of Mr. Alfred Hambling's pension entitlement as it indicates that he had a 'life only' pension rather than indicating that he had elected a survivor pension benefit. The Superintendent relied upon this error in approving the Report. The approval is, therefore, a nullity.
14. Subsection 89(4) of the *Act* provides that where the Superintendent proposes to refuse to give an approval, the Superintendent is to serve notice of the proposal, together with written reasons on the applicant for the approval.





15. Such further and other reasons that may come to my attention.

**YOU** are entitled to a hearing before the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal written notice that you require a hearing<sup>1</sup>. Any notice requesting a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE OF PROPOSAL TO MAKE AN ORDER.**

DATED at Toronto, Ontario this 22nd day of June, 2000.

Dina Palozzi  
Superintendent of Financial Services

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the “Act”);

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the Retirement Plan for the Employees of Calcomp (Canada) Inc. Registration No. 0427260

TO: Calcomp (Canada) Inc.

Attention: Mr. Ron Gellatly  
c/o Pyshon Digital Inc.  
5484 Tomken Road, Unit 30  
Mississauga ON L4W 2Z6  
**Applicant and Employer**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment, out of the Retirement Plan for the Employees of Calcomp (Canada) Inc., Registration No. 0427260 (the “Plan”), to the Applicant in the amount of \$155,565 as at December 31, 1994 adjusted for investment earnings and losses thereon and expenses to the date of payment.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that all benefits and other payments, including any enhancements arising from the surplus sharing agreement, to which members, former members and any other persons are entitled on the termination of the Plan.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Calcomp (Canada) Inc. is the employer as defined in the Plan (the “Employer”)
2. The Plan was wound up, effective December 31, 1994.

3. As at December 31, 1994 the surplus in the Plan was estimated at \$345,700.
  4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
  5. The application discloses that by written agreement made by the Employer, and 100% of the active members and other members (as defined in the application) and 66.7% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
    - a) 45% to the Employer; and
    - b) 55% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
  6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 45% of the surplus in the Plan (after adding 45% of investment earnings and deducting 45% of the expenses related to the wind up of the Plan.)
  7. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
  8. Such further and other reasons as come to my attention.
- YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the “Tribunal”) pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.



Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON M2N 6L9  
Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario this 12th day of July, 1999.

Dina Palozzi

Superintendent of Financial Services

c.c. Ms. Michelle Rival, Watson Wyatt

NOTE – PURSUANT TO section 112 of the Act, any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** *The Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the Employees' Pension Plan for the Canadian Bank Note Company, Limited Registration No. 0232124

TO: Canadian Bank Note Company,  
Limited  
145 Richmond Road,  
Ottawa, Ontario  
K1Z 1A1

Attention: George Donovan  
General Counsel  
**Applicant and Employer**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment, out of the Employees' Pension Plan for the Canadian Bank Note Company, Limited, Registration No.0232124 (the "Plan"), to **Canadian Bank Note Company, Limited** in the amount of \$7,941,500 as at April 30, 1999, adjusted for investment earnings and losses thereon and expenses to the date of payment.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. The Canadian Bank Note Company, Limited is the employer as defined in the Plan (the "Employer")
2. As at April 30, 1999 the surplus available for withdrawal in the Plan was estimated at \$15,883,000.
3. The Plan provides for payment of surplus to the Employer.

4. The application discloses that by written agreement made by the Employer, and 100% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan available for distribution at the date of payment, after deduction of expenses is to be distributed:

- a) 50% to the Employer; and
- b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.

5. The Employer has applied, pursuant to section 78 of the *Act*, and section 10 of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan (after adding 50% of investment earnings.)
6. The application appears to comply with section 78 and 79(1) of the *Act* and with section 10 and subsections 25(1) and 25(2) of the Regulation.
7. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing. Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON M2N 6L9  
Attention: The Registrar





IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario this 31st day of July, 1999.

Dina Palozzi

Superintendent of Financial Services

c.c. J. David Vincent, Fasken Campbell Godfrey

Michael Mazzuca, Koskie Minsky

Peter Peng, Morneau Sobeco

Paul Saunders, Buck Consultants

NOTE – PURSUANT TO section 112 of the Act, any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** *The Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the “Act”);

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order Under subsection 78(1) of the *Act* consenting to a payment out of the Retirement Income Plan for Employees of PPL Marketing. Registration No. 0697466

**TO:** PPL Marketing Services Inc.  
c/o Andrew Harrison  
Borden and Elliot  
4400 – 40 King Street West  
Toronto ON M5H 3Y4  
**Applicant**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment, out of the Retirement Income Plan for Employees of PPL Marketing, Registration No.0697466 (the “Plan”), to **PPL Marketing Services Inc.** in the amount of 96.3% of the surplus as at September 30, 1998, estimated to be \$116,238.80, plus interest earnings thereon to the date of payment, less expenses properly payable out of the pension fund for the plan.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that the surplus entitlements of the members, former members, and any other person entitled to payment from the fund have been paid.

**I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. PPL Marketing Services Inc. is the employer as defined in the Plan (the “Employer”).
2. The Plan was wound up, effective September 30, 1998.

3. As at September 30, 1998 the surplus in the Plan was estimated at \$116,238.80
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 66.7% of the active members and other members (as defined in the application) and 50% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
  - a) 96.3% to the Employer; and
  - b) 3.7% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 96.3% of the surplus in the Plan.
7. The application appears to comply with section 78 and subsection 79(3) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1), and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the “Tribunal”) pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON M2N 6L9  
Attention: The Registrar



IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario this 21st day of August, 2000.

Dina Palozzi

Superintendent of Financial Services

c.c. Scott Grey, PPL Marketing Services Inc.

Richard W. Murray

David B. Portener

NOTE – PURSUANT TO section 112 of the Act, any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*  
R.S.O. 1990, c. P.8, as amended;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c.P.8, as amended,  
respecting **The Pension Plan for Employees of  
Moyer Vico Corp., Registration No. 465070;**

**TO:** Arthur Andersen Inc.  
4 King Street West, Suite 1050  
Toronto, ON  
M5H 1B6

**Attention:** Lawrence Contant  
Senior Consultant  
**Administrator of The Pension  
Plan for Employees of Moyer  
Vico Corp.**

**AND TO:** Moyer Vico Corporation  
25 Milvan Drive  
Weston, ON  
M9L 1Z1

**Attention:** Adam Okhai  
President and CEO  
**Employer**

### **NOTICE OF PROPOSAL TO MAKE AN ORDER**

I PROPOSE TO ORDER that The Pension Plan  
for Employees of Moyer Vico Corp.,  
Registration No. 465070, be wound up in  
whole effective November 13, 1997.

I propose to make this order pursuant to sub-  
section 69(1) of the *Pension Benefits Act*, R.S.O.  
1990, c.P.8, as amended (the "*Act*").

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension of  
employer contributions to the pension fund.

2. The employer failed to make contributions  
to the pension fund as required by the *Act* or  
regulations.
3. The employer is bankrupt within the mean-  
ing of the *Bankruptcy and Insolvency Act*  
(*Canada*).
4. A significant number of members of the plan  
ceased to be employed by the employer as a  
result of the discontinuance of all or part of  
the business of the employer or as a result of  
the reorganization of the business of the  
employer.

**YOU are entitled to a hearing** by the Financial  
Services Tribunal (the "Tribunal") pursuant to  
subsection 89(6) of the *Act* if, within thirty (30)  
days after this Notice of Proposal is served<sup>1</sup> on  
you, you deliver to the Tribunal a written  
notice that you require a hearing.

Your written notice requiring a hearing must be  
delivered to:

Financial Services Tribunal  
160 Yonge Street, 14th Floor  
North York, ON M2N 6L9  
**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRI-  
BUNAL, WITHIN THIRTY (30) DAYS FROM  
THE DATE THIS NOTICE OF PROPOSAL IS  
SERVED ON YOU, A WRITTEN NOTICE  
THAT YOU REQUIRE A HEARING, I MAY  
MAKE THE ORDER PROPOSED HEREIN.**

**THE ADMINISTRATOR IS REQUIRED** pur-  
suant to subsection 89(5) of the *Act*, to transmit  
a copy of this Notice of Proposal to Make an  
Order to the following persons:

Industrial Wood & Allied  
Workers of Canada, Local 1-700  
2088 Weston Road  
Toronto, ON  
M9N 1X4





Attention: Ron Diotte  
President, Local 1-700  
**Union**  
Coopers & Lybrand Limited (now  
PricewaterhouseCoopers Inc.)  
145 King Street West  
Toronto, ON  
M5H 1V8

Attention: Michael Sheehan  
**Receiver**  
Mintz & Partners Limited  
1446 Don Mills Road, Suite 100  
Don Mills, ON  
M3B 3N6

Attention: Daniel R. Weisz, CA  
Senior Vice-President  
**Trustee in Bankruptcy**

DATED at Toronto, Ontario this 25th day of  
August, 2000.

Dina Palozzi  
Superintendent of Financial Services

NOTE - PURSUANT TO section 112 of the Act, any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** *The Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the Revised Employees' Pension Plan for Employees of Atwell Fleming/Young Limited Registration No. 0218743

TO: Frank S. Kisluk Limited  
c/o Fasken Martineau DuMoulin  
Toronto Dominion Bank Tower  
P.O. Box 20, Suite 4200  
Toronto-Dominion Centre  
Toronto ON M5K 1A6

Attention: Ms. Peggy McCallum  
**Applicant**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment, out of the Revised Employees' Pension Plan for Employees of Atwell Fleming/Young Limited, Registration No. #0218743 (the "Plan"), to **Frank S. Kisluk Limited, Trustee in Bankruptcy of the Estate of Atwell Fleming/Young Ltd.** in the amount of \$375,000.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that the payment of \$2,000. has been made to each member and former member of the Plan as at August 17, 1989.

**I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. The Applicant is the Trustee in Bankruptcy of Atwell Fleming/Young Limited (the employer as defined in the Plan.)

2. The Plan was wound up, effective August 17, 1989.
3. As at December 31, 1999 the surplus in the Plan was estimated at \$425,000.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Applicant, and 72.7% of the active members and 85.7% of the former members, the surplus in the Plan is to be distributed as follows:
  - a) \$375,000 as at December 31, 1999, plus investment earnings thereon to the date of payment and adjusted for expenses incurred in connection with the wind up, to the Employer; and
  - b) \$2,000 to each member and former member of the Plan as at August 17, 1989.
6. The Applicant has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of \$375,000 of the surplus in the Plan as at December 31, 1999 plus investment earnings thereon to the date of payment and adjusted for expenses incurred in connection with the wind up of the Plan.
7. The application appears to comply with section 78 and subsection 79(3) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.



Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario this 6th day of September, 2000.

Dina Palozzi

Superintendent of Financial Services

cc: KPMG Inc.

NOTE – PURSUANT TO section 112 of the *Act*, any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*  
R.S.O. 1990, c. P.8, as amended;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c.P.8, as amended,  
respecting the **Retirement Plan for the  
Employees of Recreational Services  
International (RSI) Inc.**, Registration  
No. 1002682.

**TO:** London Life Insurance Company  
255 Dufferin Avenue  
London, Ontario, N6A 4K1

**Attention:** Ms. Janice Henderson  
Customer Service Representative  
**Administrator of the Retirement  
Plan for the Employees of  
Recreational Services  
International (RSI) Inc.**

**AND TO:** Recreational Services  
International (RSI) Inc.  
6 Antares Drive, Suite 102  
Ottawa, Ontario, K2E 8A9

**Attention:** Ms. Nancy Fletcher  
Employer

### **NOTICE OF PROPOSAL TO MAKE AN ORDER**

**I PROPOSE TO ORDER** that the **Retirement  
Plan for the Employees of Recreational  
Services International (RSI) Inc.**, Registration  
No. 1002682 ("the Plan") be wound up in  
whole for those members of the Plan whose  
contributions ceased to be remitted to the Plan  
effective between November 1, 1996 and March  
24, 1997.

I propose to make this order pursuant to sub-  
section 69(1) of the *Pension Benefits Act*, R.S.O.  
1990, c.P.8, as amended (the "*Act*").

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension of  
employer contributions to the pension fund,  
and
2. The employer is bankrupt within the mean-  
ing of the *Bankruptcy and Insolvency Act*, R.S.  
1985, c. B-3, as amended.

**YOU ARE ENTITLED TO A HEARING** by the  
Financial Services Tribunal (the "Tribunal") pur-  
suant to subsection 89(6) of the *Act* if, within  
thirty (30) days after this Notice of Proposal is  
served<sup>1</sup> on you, you deliver to the Tribunal a  
written notice that you require a hearing. Any  
written notice requiring a hearing must be  
delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRI-  
BUNAL, WITHIN THIRTY (30) DAYS FROM  
THE DATE THIS NOTICE OF PROPOSAL IS  
SERVED ON YOU, A WRITTEN NOTICE  
THAT YOU REQUIRE A HEARING, I MAY  
MAKE THE ORDER PROPOSED HEREIN.**

**THE ADMINISTRATOR IS REQUIRED** pur-  
suant to subsection 89(5) of the *Act*, to transmit  
a copy of this Notice of Proposal to Make an  
Order to the following persons:

Deloitte & Touche Inc.  
1000 Royal Bank Centre  
60 Sparks Street  
Ottawa, Ontario, K1P 5T8

**Attention:** Mr. David J. Boddy  
**Trustee in Bankruptcy**

**DATED** at Toronto, Ontario this 11th day of  
October, 2000.

Dina Palozzi  
Superintendent of Financial Services

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.





IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28, respecting the **Pension Plan for Salaried Employees of Frink Environmental Inc. and Hamilton Gear Inc., (the "Pension Plan")** Registration Number 337691;

TO: PricewaterhouseCoopers Inc.  
Suite 1100  
One Robert Speck Parkway  
Mississauga ON  
L4Z 3M3

Attention: Paul Macphail  
**Administrator of the Pension Plan for Salaried Employees of Frink Environmental Inc. and Hamilton Gear Inc.**

AND TO: Hamilton Gear Inc.  
c/o 66 Wellington Street West,  
Suite 2901  
Toronto Dominion Bank Tower,  
TD Centre, Toronto ON  
M5K 1G8

Attention: Mr. David Lowry

AND TO: Frink Environmental Inc.  
c/o 66 Wellington Street West,  
Suite 2901  
Toronto Dominion Bank Tower,  
TD Centre, Toronto ON  
M5K 1G8

Attention: Mr. David Lowry  
**Employer**

## **Notice of Proposal to Make a Declaration**

### **WHEREAS:**

1. The Pension Plan for Salaried Employees of Frink Environmental Inc. and Hamilton Gear Inc., Registration No. 337691 (the "Pension Plan") is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Pension Plan was wound up effective September 20, 1994; and
4. The Superintendent of Pensions appointed PricewaterhouseCoopers as the administrator (the "Administrator") of the Pension Plan on October 20, 1994.

NOW THEREFORE TAKE NOTICE I propose to consider to make a declaration pursuant to section 83 of the *Act* that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Supplement to the Wind Up Report filed by the Administrator indicates an estimated funding deficiency of \$797,878.00 as at June 30, 2000.
2. On September 20, 1994, Frink Environmental Inc. and Hamilton Gear Inc. were adjudged bankrupt.
3. The trustee in bankruptcy of Frink Environmental Inc. and Hamilton Gear Inc. has advised the Administrator that there are no assets available from the estate of Frink Environmental Inc. and Hamilton Gear Inc. for the Pension Plan.



YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing<sup>1</sup>. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

DATED at Toronto, Ontario this 30th day of October, 2000.

Dina Palozzi  
Superintendent of Financial Services

<sup>1</sup>NOTE – PURSUANT TO section 112 of the *Act*, any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S. O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by The Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S. O. 1997, c. 28, respecting the **Pension Plan for Union Employees of Exothermic Company of Canada Ltd., Covered under the United Steelworkers of America, on behalf of Local 8762, Registration Number 0985770** (previously C-104305)

TO: The Imperial Life Assurance Company  
1 Complex DeJardins  
Montreal PQ  
H5B 1E2

Attention: Elaine Desloges, F.S.A., F.C.I.A.  
Actuarial Consultant  
**Administrator**  
Exothermic Company of Canada  
4962 Union Road, Unit #2  
Beamsville ON  
L0R 1B4

Attention: Pierree Vayda  
President  
Employer

## **NOTICE OF PROPOSAL TO MAKE A DECLARATION**

### **WHEREAS:**

13. The Pension Plan for Union Employees of Exothermic Company of Canada Ltd., covered under the United Steelworkers of America, on behalf of Local 8762,

Registration Number 0985770 (previously C-104305) (the "Union Employees Plan") is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S. O. 1997, c. 28 (the "Act"); and

14. The Union Employees' Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
15. The Pension Plan was wound up effective March 31, 1993; and
16. The Superintendent of Pensions appointed The Imperial Life Assurance Company as the administrator (the "Administrator") of the Union Employee's Pension Plan on December 13, 1996;

**NOW THEREFORE TAKE NOTICE** that I propose to consider to make a declaration pursuant to section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

1. The Wind Up Report filed by the Administrator indicates an estimated funding deficiency of \$30,000 as at March 31, 1993.
2. On March 31, 1993, Exothermic Company of Canada ceased its operations and was placed in receivership.
3. The receiver of Exothermic Company of Canada has advised the Administrator that there are no assets available for the Pension Plan.

**YOU** are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written



notice that you require a hearing<sup>1</sup>. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 30th day of October, 2000.

Dina Palozzi  
Superintendent of Financial Services

<sup>1</sup>NOTE – PURSUANT TO section 112 of the *Act*, any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.





IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended ("the Act");

AND IN THE MATTER OF a proposal by the Superintendent of Financial Services to make an Order under section 69 of the *Act* respecting the Pension Plan for Employees of Proctor & Redfern Limited 0289579

TO: Proctor & Redfern Limited  
45 Green Belt Drive  
Toronto, Ontario  
M3C 3K3

Attention: Stewart Angus  
President and Chief  
Executive Officer  
Employer and Administrator

### **NOTICE OF PROPOSAL TO MAKE AN ORDER**

I PROPOSE TO ORDER that the Pension Plan for Employees of Proctor & Redfern Limited, Registration Number 0289579 (the "Plan"), be wound up in part in respect of those members and former members of the Plan who were employed by Proctor & Redfern Limited (the "Employer") and who ceased to be employed by the Employer effective between June 9, 1995 and August 1, 1996 as a result of the discontinuance of all or a significant portion of the business carried on by the Employer at its Kingston, Sault Ste. Marie and Thunder Bay locations.

I propose to make this order pursuant to subsection 69(1) of the *Act*.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Proctor & Redfern Limited is the employer and administrator of the Plan.

2. All or a significant portion of the business carried on by the Employer at one or more specific locations was discontinued between June 9, 1995 and August 1, 1996, within the meaning of ss.69(1)(e) of the *Act*.

3. Such further and other reasons that may come to my attention.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing<sup>1</sup>. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, Ontario  
M2N 6L9

Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

THE ADMINISTRATOR IS REQUIRED pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons: all members and former members of the Plan who were employed by the Employer and who ceased to be employed by the Employer at the Kingston, Sault Ste. Marie or Thunder Bay locations effective between June 9, 1996 and August 1, 1996.

DATED at Toronto, Ontario this 30th day of October, 2000.

Dina Palozzi  
Superintendent of Financial Services

<sup>1</sup>NOTE - PURSUANT TO section 112 of the *Act*, any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*  
R.S.O. 1990, c. P.8, as amended by the *Financial  
Services Commission of Ontario Act, 1997*, S.O.  
1997, c.28;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c.P.8, as amended by  
the *Financial Services Commission of Ontario Act,  
1997*, S.O. 1997, c.28, respecting the **Employee  
Retirement Plan for the employees of Regal  
International Tool & Mould Inc., Registration  
No. 1010198;**

**TO:** London Life Insurance Company  
255 Dufferin Avenue  
London ON, N6A 4K1

**Attention:** Ms. Janice Henderson  
Customer Service Specialist  
**Administrator of the Employee  
Retirement Plan for the employees of  
Regal International Tool &  
Mould Inc.**

**AND TO:** Regal International Tool &  
Mould Inc.  
P.O. Box 820, 5000 Regal Drive,  
Windsor ON,  
N9A 6K7

**Attention:** Mrs. Lorna Briscoe,  
Human Resources Manager

**AND TO:** Regal International Models,  
Fixtures & Prototypes Inc.,  
5110 Halford Road,  
Windsor ON,  
N9A 6J3

**Attention:** Ms. Penny Milicia

**AND TO:** RPT Plastics Inc.  
4165 Walker Road,  
Windsor ON,  
N8W 3T6

**Attention:** Mr. Lawrence Jeun  
**Employer**

### **NOTICE OF PROPOSAL TO MAKE AN ORDER**

**I PROPOSE TO ORDER** that the Employee  
Retirement Plan for the employees of Regal  
International Tool & Mould Inc., Registration  
No. 1010198, be wound up effective May 1, 1999.

I propose to make this order pursuant to sub-  
section 69(1) of the *Pension Benefits Act*, R.S.O.  
1990, c.P.8, as amended by the *Financial Services  
Commission of Ontario Act, 1997*, S.O. 1997, c.28  
(the "Act").

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASON:**

There has been a cessation or suspension of  
employer contributions to the pension fund.  
**YOU** are entitled to a hearing by the Financial  
Services Tribunal (the "Tribunal") pursuant to  
subsection 89(6) of the *Act*, if, within thirty  
(30) days after this Notice of Proposal is served  
on you, you deliver to the Tribunal a written  
notice that you require a hearing<sup>1</sup>. Any notice  
requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRI-  
BUNAL, WITHIN THIRTY (30) DAYS FROM  
THE DATE THIS NOTICE OF PROPOSAL IS  
SERVED ON YOU, A WRITTEN NOTICE  
THAT YOU REQUIRE A HEARING, I MAY  
MAKE THE ORDER PROPOSED HEREIN.  
THE ADMINISTRATOR IS REQUIRED**  
pursuant to subsection 89(5) of the *Act*, to  
transmit a copy of this Notice of Proposal to



Make an Order to the following persons:

To: KPMG Inc., P.O. Box 31  
Commerce Court West, Suite 3300  
Toronto ON  
M5L 1B2

Attention: Geoff Publow  
Receivers for Regal International Tool  
& Mould Inc. and RPT Plastics Inc.  
Trustee in Bankruptcy for Regal  
International Models, Fixtures &  
Prototypes Inc.

And To: Zwaig Associates Inc.  
Suite 1560, The Exchange Tower,  
P.O. Box 17, 130 King St W.,  
Toronto ON  
M5X 1J5

Attention: Sean Hinkson  
Trustee In Bankruptcy for Regal  
International Tool & Mould Inc.  
and RPT Plastics Inc.

DATED at Toronto, Ontario this 13th day of  
November, 2000.

Dina Palozzi  
Superintendent of Financial Services

NOTE - PURSUANT TO section 112 of the Act, any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended, respecting the **Pension Plan for Hourly Employees of Alumiprime Windows Limited**, Registration No. 1021005;

TO: Arthur Andersen Inc.  
4 King Street West, Suite 1050  
Toronto, ON  
M5H 1B6

Attention: Lawrence Contant  
Administrator

AND TO: Alumiprime Windows Limited  
40 St. Regis Crescent North  
Downsview, ON  
M3J 1Z2

Attention: Martin Cash  
Employer

### **NOTICE OF PROPOSAL TO MAKE AN ORDER**

I PROPOSE TO ORDER that the **Pension Plan for Hourly Employees of Alumiprime Windows Limited**, Registration No. 1021005, be wound up in whole effective November 24, 1998.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "Act").

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund.

2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations.
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act (Canada)*.
4. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
5. All or a significant portion of the business carried on by the employer at a specific location was discontinued.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing. Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON M2N 6L9

Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**THE ADMINISTRATOR IS REQUIRED** pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons:





United Steelworkers of America  
25 Cecil Street  
Toronto, ON  
M5T 1N1

Attention: Mr. Mohamed Baksh  
**Union**

Shiner & Associates Inc.  
30 Wertheim Court, Suite 22  
Richmond Hill, ON  
L4B 1B9

Attention: Ms. Debi Geller  
**Trustee in Bankruptcy**

DATED at Toronto, Ontario this 14th day of  
November, 2000.

Dina Palozzi  
Superintendent of Financial Services

NOTE - PURSUANT TO section 112 of the *Act*, any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the “*Act*”);

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the Retirement Plan for Rene Malette of Malette Inc.  
Registration No. 967752

TO: Malette Inc.  
C.P./P.O. Box 1100  
Timmins, Ontario, P4N 7H9

Attention: Mr. Fern E. Boileau  
Group Pension Administration  
**Applicant and Employer**

#### NOTICE OF PROPOSAL

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment, out of the Retirement Plan for Rene Malette of Malette Inc., Registration No. 967752 (the “*Plan*”), to **Malette Inc.** in the amount of \$74,715 as at May 31, 1999 plus investment income and net of fees and expenses.

#### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Malette Inc. is the employer as defined in the Plan (the “*Employer*”)
2. The Plan was wound up, effective May 31, 1999
3. As at May 31, 1999 the surplus in the Plan was estimated at \$74,715
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan
5. The Plan is a designated pension plan
6. The application discloses that by written agreement of the sole pension plan member, the surplus in the Plan at the date of

payment, after deduction of wind up expenses is to be distributed 100% to the Employer.

7. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 100% of the surplus in the Plan (after adding investment earnings and deducting the fees and expenses related to the wind up of the Plan and the distribution of the surplus assets.)
8. The application appears to comply with section 78 and subsection 79(3) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
9. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the “*Tribunal*”) pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing. Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York, ON, M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario this 20th day of November, 2000.

Dina Palozzi  
Superintendent of Financial Services  
c.c. Farida Samji, William M. Mercer Limited

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O.1990, c.P.8, as amended (the “*Act*”);  
**AND IN THE MATTER OF** a Partial Wind Up Report submitted by Marshall Steel Limited to the Superintendent of Financial Services respecting the **Retirement Plan for Salaried Employees of Marshall Steel Limited and Associated Companies Registration Number 0968081** (the “*Plan*”)

TO: MARSHALL-BARWICK INC.  
 100 Sheppard Avenue East  
 Suite 930  
 Toronto, Ontario  
 M2N 6N5

Attention: Maynard Young

### **NOTICE OF PROPOSAL TO REFUSE TO APPROVE A PARTIAL WIND UP REPORT**

**I PROPOSE TO REFUSE TO APPROVE** the Partial Windup Report as at August 28, 1992 (the “*Report*”) for the *Plan* in relation to employees who ceased to be employed by Marshall Steel Limited (now known as Marshall-Barwick Inc.) as a result of the closure of its plant in Milton, Ontario.

### **I PROPOSE TO MAKE THIS REFUSAL FOR THE FOLLOWING REASONS:**

Pursuant to subsection 70(5) of the *Act*, the *Report* does not meet the requirements of the *Act* and the regulations, and does not protect the interests of the members and former members of the *Plan* for the following reasons:

1. Marshall Steel Limited (the “*Company*”) is the employer and administrator of the *Plan*.
2. The *Company* closed its plant in Milton, Ontario, on August 28, 1992.
3. The *Report* indicates that the plant shut-down was preceded and followed by a series

of layoffs and terminations of salaried employees that occurred between January 1, 1992 and September 22, 1993 (the “wind up period”). The *Report* indicates that a total of 34 employees have been included in the partial wind up and are therefore eligible for benefits referred to in subsection 70(6) of the *Act*. They are “(a)ll active or transferred members who terminated either voluntarily or involuntarily (except for just cause) between January 1, 1992 and September 22, 1993 in Ontario or the U.S.”

4. Subsection 70(6) of the *Act* states that “(o)n the partial wind up of a pension plan, members, former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits they would have on a full wind up of the pension plan on the effective date of the partial wind up.”
5. Subsection 70(5) of the *Act* states that “(t)he Superintendent may refuse to approve a wind up report that does not meet the requirements of th(e) *Act* and the regulations or that does not protect the interests of the members and former members of the pension plan.”
6. One member, Mr. Jeffrey G. Marshall, who worked at the *Company*’s plant in Milton, Ontario, was not included in the partial wind up. The *Company* claims that even though Mr. Marshall’s employment was terminated during the wind up period, he is not eligible for benefits referred to in subsection 70(6) of the *Act* because his employment was not terminated as a result of the closure of the *Company*’s plant in Milton, Ontario. It claims that Mr. Marshall was terminated for cause “for not acting in the best interests of the corporation.”



7. Given that Mr. Marshall's employment was terminated during the wind up period and given that the Company has not demonstrated that the termination of Mr. Marshall's employment was not a result of the closure of its plant in Milton, Ontario, the Superintendent considers that it would be contrary to the requirements of subsection 70(5) of the *Act* to exclude Mr. Marshall from the partial wind up. The Report excludes Mr. Marshall from the partial wind up, therefore, it does not meet the requirements of subsection 70(5) of the *Act* and does not protect the interests of all those affected by the partial wind up. Specifically, it does not protect the interests of Mr. Marshall.

8. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing. Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario this 12th day of December, 2000.

Dina Palozzi  
Superintendent of Financial Services

<sup>1</sup> NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after the date of mailing.





IN THE MATTER OF the *Pension Benefits Act*  
R.S.O. 1990, c. P.8, as amended;

AND IN THE MATTER OF a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c.P.8, as amended,  
respecting the **Pension Plan for the  
Employees of Diversified International  
Products Limited, Registration No. 0494278;**

TO: The Standard Life Assurance  
Company  
245 Sherbrooke Street West  
Montreal, PQ, H3G 1G3

Attention: Dominic Muro  
Analyst  
**Administrator**

AND TO: Diversified International  
Products Limited  
66 West Wilmot Street  
Richmond Hill, ON, L4B 1H8

Attention: Bruce McLarty  
President  
**Employer**

### **NOTICE OF PROPOSAL TO MAKE AN ORDER**

I PROPOSE TO ORDER that the **Pension Plan  
for the Employees of Diversified  
International Products Limited, Registration  
No. 0494278**, be wound up in whole effective  
February 19, 1999.

I propose to make this order pursuant to sub-  
section 69(1) of the *Pension Benefits Act*, R.S.O.  
1990, c.P.8, as amended (the "*Act*").

**I PROPOSE TO MAKE THIS ORDER FOR THE  
FOLLOWING REASONS:**

1. There was a cessation or suspension of  
employer contributions to the pension fund.
2. The employer is bankrupt within the meaning  
of the *Bankruptcy and Insolvency Act* (Canada).

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if  
delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served,  
or delivered on the seventh day after mailing.

3. A significant number of members of the  
pension plan ceased to be employed by the  
employer as a result of the discontinuance of  
all or part of the business of the employer or  
as a result of the reorganization of the busi-  
ness of the employer.
4. All or a significant portion of the business  
carried on by the employer at a specific loca-  
tion is discontinued.

YOU are entitled to a hearing by the Financial  
Services Tribunal (the "Tribunal") pursuant to  
subsection 89(6) of the *Act* if, within thirty (30)  
days after this Notice of Proposal is served on  
you, you deliver to the Tribunal a written  
notice that you require a hearing<sup>1</sup>. Any notice  
requiring a hearing must be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON M2N 6L9  
**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRI-  
BUNAL, WITHIN THIRTY (30) DAYS FROM  
THE DATE THIS NOTICE OF PROPOSAL IS  
SERVED ON YOU, A WRITTEN NOTICE  
THAT YOU REQUIRE A HEARING, I MAY  
MAKE THE ORDER PROPOSED HEREIN.**

**THE ADMINISTRATOR IS REQUIRED**  
pursuant to subsection 89(5) of the *Act*, to  
transmit a copy of this Notice of Proposal to  
Make an Order to the following person:

BDO Dunwoody Limited  
Royal Bank Plaza, P.O. Box 33  
Toronto, ON, M5J 2J9

Attention: Les Fulton  
**Trustee in Bankruptcy**

DATED at Toronto, Ontario this 14th day of  
December, 2000.

Dina Palozzi  
Superintendent of Financial Services



**IN THE MATTER OF** The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(4) of the Act consenting to a payment out of the Pension Plan for Non-Union Salaried Employees of MAN Roland Canada, Inc. Registration No. 988808

TO: MAN Roland Canada Inc.  
800 East Oak Hill Drive  
Westmont IL 60559  
U.S.A.

Attention: Barbara Palla

**Director, Human Resources**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(4) of the *Act*, consenting to the payment, out of the Pension Plan for Non-Union Salaried Employees of MAN Roland Canada, Inc., Registration No. 988808 (the "Plan"), to **MAN Roland Canada Inc.** in the amount of \$32,000.

**I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

6. MAN Roland Canada Inc. is the employer as defined in the Plan (the "Employer").
7. The Employer had made contributions to the fund of \$8,000 per month for the months of January to April, 1999 inclusive, based on the actuarial report effective January 1, 1996, instead of the actuarial report effective January 1, 1999. The recommended monthly Employer contribution based on the actuarial report effective January 1, 1999 was \$0.
8. The actuarial reports effective January 1, 1996 and January 1, 1999 have been filed

with the Financial Services Commission of Ontario.

9. Evidence of the monthly overpayments to the fund for the months January to April, 1999 have been submitted to the Financial Services Commission of Ontario.
10. The Employer has distributed copies of the notice of application for the refund of employer overpayment to the pension fund to all members and former members of the plan.
11. There were no member submissions made about the repayment.
12. The application appears to comply with section 78(4) of the *Act*.
13. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing. Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario this 21st day of December, 2000.

Dina Palozzi  
Superintendent of Financial Services

<sup>1</sup> NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the “Act”);

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the Pension Plan for Employees of The Copley Noyes and Randall Limited. Registration No. 415752

**TO:** The Copley Noyes and Randall Limited  
56 York Blvd., P.O. Box 2024, LCD 1  
Hamilton, ON, L8N 3S6

**Attention:** Sandy Gillies, C.A.  
Controller

**Applicant and Employer**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment, out of the Pension Plan for Employees of The Copley Noyes and Randall Limited, Registration No.415752 (the “Plan”), to **The Copley Noyes and Randall Limited** in the amount of \$ 85,500 as at September 30, 1998 plus investment earnings thereon to the date of payment.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that provision has been made for the payment of the basic benefits and surplus assets to the member.

**I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. The Copley Noyes and Randall Limited is the employer as defined in the Plan (the “Employer”).
2. The Plan was wound up, effective September 30, 1998.

3. As at September 30, 1998 the surplus in the Plan was estimated at \$ 440,971.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The Plan is a designated significant shareholder pension plan.
6. The application discloses that by written agreement made by the Employer, and the sole pension plan member, the surplus in the Plan at the date of payment, after adding investment earnings, is to be distributed:
  - a) 19.39% to the Employer; and
  - b) 80.61% to the Sole Member of the Plan.
7. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 19.39% of the surplus in the Plan (after adding investment earnings to the Plan).
8. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
9. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the “Tribunal”) pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON M2N 6L9

**Attention:** The Registrar



IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario this 3rd day of January, 2001.

Dina Palozzi  
Superintendent of Financial Services  
c.c. T.D. Kidd, Cowan Wright Limited

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.





IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, S.O. 1997, c. 28 (the “Act”);

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order Requiring the Wind Up in Part of the **Oshawa Group Limited Retirement Income Plan Registration Number 337675**

TO: Sobeys Capital Inc.,  
Ontario Division  
6355 Viscount Road,  
Mississauga, Ontario,  
L4V 1W2

Attention: Mr. W. E. Vickers  
**Director Pension  
Administration  
Employer and Administrator  
of the Oshawa Group  
Limited  
Retirement Income Plan**

#### **NOTICE OF PROPOSAL TO MAKE AN ORDER**

I PROPOSE TO ORDER that The Oshawa Group Limited Retirement Income Plan, Registration Number 337675 (the “Plan”) be wound up in part in relation to those members and former members of the Plan who were employed by SWO Distribution Centres (“Surelink”) in its Malton, Queensway and London plants, and who ceased employment with Surelink effective March 5, 2000 as a result of the closure of these plants.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended (the “Act”).

**I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

15. Sobeys Capital Inc. (“Sobeys”), formerly the Oshawa Group Limited (the “Oshawa Group”), is the employer and the administrator of the Plan.
16. Surelink purchased some of the distribution business of the Oshawa Group effective January 29, 1995. The Oshawa Group employees at the Malton, Queensway, and London plants, who accepted employment with Surelink (the “transferred employees”) joined the Surelink pension plan effective January 29, 1995.
17. The pension benefits accrued by the transferred employees prior to the date of the sale remained in the Plan.
18. Surelink closed its Malton, Queensway, and London plants effective March 5, 2000. In connection with this closure, it terminated approximately 422 of the transferred employees, and notified the Pension Plans Branch of the Financial Services Commission of its intention to wind up its pension plan.
19. Under paragraph 69(1)(d) of the *Act* the Superintendent of Financial Services (the “Superintendent”) may require the wind up of a pension plan as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
20. Under paragraph 69(1)(e) of the *Act* the Superintendent may require the wind up of a pension plan where all or a significant portion of the business carried on by an employer at a specific location is discontinued.
21. For the purposes of the *Act*, the word “employer” as it is used in subsection 69, in respect of an employee with benefits in



more than one plan, refers to both the predecessor and successor employer, as held by Pension Commission of Ontario in *Gencorp Canada Inc.* and confirmed by Divisional Court and the Court of Appeal.<sup>1</sup>

22. Paragraph 80(1)(a) of the *Act* provides that when an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the assets of its business, a member of the pension plan who in conjunction with the sale, assignment or disposition becomes an employee of the successor employer and a member of the successor employer's pension plan, continues to be entitled, without further accrual, to the benefits provided under the predecessor employer's pension plan.
23. Subsection 80(3) of the *Act* provides that where a transaction as described in subsection 80(1) above takes place, the employment of the employee shall be deemed, for the purposes of the *Act*, not to be terminated by reason of the transaction.
24. As held in *Gencorp*, subsection 80(3) deems the non-termination for the purpose of ensuring continuity of membership for the transferred employees and to prevent them from losing their previous years of service in the calculation of future benefits.
25. The effect of subsection 80(3), for the transferred employees, is that Sobeys continues to be their employer for the purpose of the Plan.
26. Accordingly, Sobeys is an employer under section 69 of the *Act* due to the discontinuance of the business by Surelink at Surelink's

London, Malton, and Queensway plants.

27. A significant number of the members of the plan ceased to be employed as a result of the discontinuance or reorganization of the business of Surelink at its London, Malton, and Queensway plants, within the meaning of paragraph 69(1)(d) of the *Act*.
28. All or a significant portion of the business carried on by Surelink at its London, Malton, and Queensway plants was discontinued, within the meaning of paragraph 69(1)(e) of the *Act*.
29. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing<sup>2</sup>. Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
North York, ON M2N 6L9  
**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario this 4th day of January, 2001,

Dina Palozzi  
Superintendent of Financial Services

<sup>1</sup>Consolidated *Gencorp Canada*, P.C.O. Decision Aug. 31, 1994, confirmed Divisional Court, [1995 O.J. No. 3768] Dec. 7, 1995, confirmed Ontario Ct. of Appeal [1998 O.J. No. 961] March 11, 1998.

<sup>2</sup>NOTE - PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



IN THE MATTER OF the *Pension Benefits Act*  
R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Act*,  
respecting the **Revised Employees' Pension  
Plan of the Employer, Registration No.  
389114**

TO: Canada Life Assurance Company  
330 University Avenue  
Toronto, Ontario  
M5G 1R8

Attention: Milica Stojšin  
Plan Wind-up Specialist  
**Administrator of the Revised  
Employees' Pension Plan of the  
Employer**

AND TO: Listowel Transport Lines Limited  
P.O. Box 390  
Gore Bay, Ontario  
POP 1H0

AND TO: Canada-Jet Transportation, a  
division of Canada Transport  
Group Limited  
200 Jamieson Bone Road  
P.O. Box 1450  
Belleville, Ontario  
K8N 5J7  
**Employer**

### **NOTICE OF PROPOSAL TO MAKE AN ORDER**

I PROPOSE TO ORDER that the **Revised  
Employees' Pension Plan of the Employer,  
Registration No. 389114** (the "Plan") be  
wound up in whole effective the 28th day of  
March, 1992. I propose to make this order pur-  
suant to subsection 69(1) of the *Act*.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASON:**

There was a cessation or suspension of employer  
contributions to the pension fund.

YOU are entitled to a hearing by the Financial  
Services Tribunal (the "Tribunal") pursuant to  
subsection 89(6) of the *Act*, if, within thirty  
(30) days after this Notice of Proposal is served  
on you, you deliver to the Tribunal a written  
notice that you require a hearing<sup>1</sup>. Any notice  
requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRI-  
BUNAL, WITHIN THIRTY (30) DAYS FROM  
THE DATE THIS NOTICE OF PROPOSAL IS  
SERVED ON YOU, A WRITTEN NOTICE  
THAT YOU REQUIRE A HEARING, I MAY  
MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario this 9th day of  
January, 2001.

Dina Palozzi  
Superintendent of Financial Services

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after the day of mailing.





**IN THE MATTER OF** The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the “Act”);

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the Retirement Plan for Employees of D.C. Heath Canada, Ltd. Registration No. 0356444

TO: D.C. Heath Canada, Ltd.  
c/o Houghton Mifflin Company  
222 Berkeley Street  
Boston, MA  
U.S.A.  
02116-3764

Attention: Elizabeth L. Hacking  
President

**Applicant and Employer**

**NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment, out of the Retirement Plan for Employees of D.C. Heath Canada, Ltd., Registration No.0356444 (the “Plan”), to **D.C. Heath Canada, Ltd.** in an amount equal to 25% of the net surplus on the date of final distribution of the Plan assets; that is, the amount of surplus remaining in the Plan fund after taking into account the investment earnings realized on, and the expenses paid from, the fund since the effective date of wind-up. As at May 31, 1996, total surplus equalled \$595,449.

**I PROPOSE TO MAKE THE ORDER** effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in

paragraph 5 below) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

**I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. D.C. Heath Canada, Ltd. is the employer as defined in the Plan (the “Employer”).
2. The Plan was wound up, effective May 22, 1996.
3. As at May 31, 1996 the surplus in the Plan was estimated at \$595,449.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 92% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
  - a) 25% to the Employer; and
  - b) 75% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 25% of the surplus in the Plan (after adding 25% of investment earnings and deducting 25% of the expenses related to the wind up of the Plan.)
7. The application appears to comply with section 78 and subsection 79(3) (a) and (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.





8. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing<sup>1</sup>. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street, 14th Floor  
Toronto, Ontario  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario this 9th day of January, 2001.

Dina Palozzi  
Superintendent of Financial Services  
c.c. James Carter, William M. Mercer Limited

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



## Orders that Pension Plans be Wound Up

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended. respecting **The Pension Plan for Employees of Moyer Vico Corp., Registration No. 465070**, dated the 25th day of August, 2000;

TO: Arthur Andersen Inc.  
4 King Street West, Suite 1050  
Toronto, ON  
M5H 1B6

Attention: Lawrence Contant  
Senior Consultant  
**Administrator**

AND TO: Moyer Vico Corporation  
25 Milvan Drive  
Weston, ON  
M9L 1Z1

Attention: Adam Okhai  
President and CEO  
**Employer**

### ORDER

ON the 29th day of August, 2000, I issued a **Notice of Proposal to make an Order** dated the 25th day of August, 2000, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*"), to the Administrator and to the Employer to wind up in whole **The Pension Plan for Employees of Moyer Vico Corp., Registration No. 465070**.

NO notice requiring a hearing was delivered to the Financial Services Tribunal, (the "*Tribunal*"), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that **The Pension Plan for Employees of Moyer Vico Corp., Registration No. 465070** be wound up in whole, effective November 13, 1997, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by the *Act* or regulations.
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
4. A significant number of members of the plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.

PURSUANT TO subsection 69(2) of the *Act*, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Industrial Wood & Allied Workers  
of Canada, Local 1-700  
2088 Weston Road  
Toronto, ON  
M9N 1X4

Attention: Ron Diotte  
President, Local 1-700  
**Union**

Coopers & Lybrand Limited (now  
PricewaterhouseCoopers Inc.)  
145 King Street West  
Toronto, ON  
M5H 1V8

Attention: Michael Sheehan  
**Receiver**



Mintz & Partners Limited  
1446 Don Mills Road, Suite 100  
Don Mills, ON  
M3B 3N6

Attention: Daniel R. Weisz, CA  
Senior Vice-President  
**Trustee in Bankruptcy**

DATED at Toronto, Ontario this 26th day of  
October, 2000

K. David Gordon  
Director, Pension Plans Branch  
by Delegated Authority from  
Dina Palozzi  
Superintendent of Financial Services



IN THE MATTER OF the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8; as amended ("the Act");

AND IN THE MATTER OF a Proposal of the  
Superintendent of Financial Services to make  
an Order pursuant to section 69 of the *Act*  
respecting the **Retirement Plan for the  
Employees of Recreational Services  
International (RSI) Inc., Registration No.  
1002682**

TO: London Life Insurance Company  
255 Dufferin Avenue  
London, Ontario  
N6A 4K1

Attention: Ms. Janice Henderson  
Customer Service Representative  
**Administrator of the Retirement  
Plan for Employees of  
Recreational Services  
International (RSI) Inc.**

AND TO: Recreational Services  
International (RSI) Inc.  
6 Antares Drive, Suite 102  
Ottawa, Ontario  
K2E 8A9

Attention: Ms. Nancy Fletcher  
**Employer**

### **ORDER**

ON the 13th day of October, 2000, I issued a  
**Notice of Proposal to make an Order** dated  
the 11th day of October, 2000, pursuant to sub-  
section 69(1) of the *Act*, to the Administrator  
and to the Employer to wind up in whole the  
**Retirement Plan for the Employees of  
Recreational Services International (RSI) Inc.,  
Registration No. 1002682** (the "Plan") for  
those members of the Plan whose contributions  
ceased to be remitted to the Plan effective  
between November 1, 1996 and March 24, 1997.

NO notice requiring a hearing was delivered to  
the Financial Services Tribunal, (the "Tribunal"),  
by the Administrator and/or the Employer  
within the time prescribed by subsection 89(6)  
of the *Act*.

**IT IS THEREFORE HEREBY ORDERED** that  
the **Retirement Plan for the Employees of  
Recreational Services International (RSI) Inc.,  
Registration No. 1002682** be wound up in  
whole for those members of the Plan whose  
contributions ceased to be remitted to the Plan  
effective between November 1, 1996 and March  
24, 1997, for the following reasons:

1. There was a cessation or suspension of  
employer contributions to the pension fund;  
and
2. The employer is bankrupt within the  
meaning of the *Bankruptcy and Insolvency Act*,  
R.S. 1985, c. B-3, as amended.

**PURSUANT TO** subsection 69(2) of the *Act*, the  
Administrator is required to give notice of this  
Order to the following person by transmitting a  
copy hereof:

Deloitte & Touche Inc.  
1000 Royal Bank Centre  
60 Sparks Street  
Ottawa, Ontario  
K1P 5T8

Attention: Mr. David J. Boddy  
**Trustee in Bankruptcy**

DATED at Toronto, Ontario this 20th day of  
December, 2000.

K. David Gordon  
Director, Pension Plans Branch by Delegated  
Authority from  
Dina Palozzi  
Superintendent of Financial Services





IN THE MATTER OF the *Pension Benefits Act*,  
R.S.O. 1990, as amended (the "Act");

AND IN THE MATTER OF an Order of the  
Superintendent of Financial Services under  
s.26(4) of the *Act*, respecting the **Pension Plan  
for Non-Unionized Employees of Quebecor  
Printing Inc., Registration No. 320556** (the  
"Plan");

TO: Quebecor Printing Inc.  
612 St. Jacques St.  
Montreal, Quebec  
H3C 4M8

Attention: Mr. Alain Robert Minot  
Director, Compensation and Benefits  
**Administrator**

### **ORDER**

1. In July 1999, Quebecor Printing Inc.  
("Quebecor") applied to register the follow-  
ing amendment to the Plan:

Resolution of the Pension Committee of the  
Board of Directors, effective July 24, 1996,  
dated January 14, 1998 (the "Amendment").

2. On September 27, 2000, I registered the  
Amendment and a Notice of Registration was  
issued in respect of the Amendment.

3. Subsection 26(3) of the *Act* provides,  
Within the prescribed period of time after an  
amendment to a pension plan is registered,  
the administrator shall transmit notice and a  
written explanation of the amendment to  
each member, former or other person entitled  
to payment from the fund who is affected by  
the amendment.

Subsection 39(1) of R.R.O. 1990, Regulation  
909, as amended (the "Regulation") provides,  
The administrator shall transmit notice and  
an explanation of the amendment required  
under subsection 26(3) of the *Act*, within  
sixty days after registration, to each member,

former member or other person who is or  
will be affected by an amendment that is  
registered.

4. Subsection 26(4) of the *Act* provides, in part,  
The Superintendent need not require the  
transmittal of notices under subsection (1) or  
by order may dispense with the notice  
required by subsection (3), or both,

(a) If the Superintendent is of the opinion  
that the amendment is of a technical nature  
or will not substantially affect the pension  
benefits, rights or obligations of a member or  
former member or will not adversely affect  
any person entitled to payments from the  
pension fund.

5. I am of the opinion that the Amendment is  
of a technical nature and will not substan-  
tially affect the pension benefits, rights or  
obligations of a member or former member  
of the Plan. Therefore, I make this order  
under subsection 26(4) of the *Act* to dispense  
with the written notice required by subsec-  
tion 26(3) of the *Act*.

6. In accordance with subsection 39(2) of the  
Regulation, the administrator is to provide  
notice and an explanation of the  
Amendment to the members with the next  
statement required under section 27 of the  
*Act*. Subsection 39(2) of the Regulation pro-  
vides that, where an amendment is registered  
and the Superintendent dispenses with the  
notice required under subsection 26(3) of the  
*Act*, the administrator shall provide notice  
and an explanation of the amendment to  
members with the next statement required  
under section 27 of the *Act*.

DATED at Toronto, Ontario this 3rd day of  
January, 2001.

Dina Palozzi  
Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P.8, as amended,  
respecting the **Pension Plan for Hourly  
Employees of Alumiprime Windows Limited**,  
**Registration No. 1021005**, dated November 14,  
2000;

TO: Arthur Andersen Inc.  
4 King Street West, Suite 1050  
Toronto, ON  
M5H 1B6

Attention: Lawrence Contant  
**Administrator**

AND TO: Alumiprime Windows Limited  
40 St. Regis Crescent North  
Downsview, ON  
M3J 1Z2

Attention: Martin Cash  
**Employer**

### **ORDER**

ON or about November 21, 2000, I issued a  
**Notice of Proposal to make an Order** dated  
November 14, 2000, pursuant to subsection  
69(1) of the *Pension Benefits Act*, R.S.O. 1990, c.  
P.8, as amended (the "*Act*"), to the Administrator  
and to the Employer to wind up in whole the  
**Pension Plan for Hourly Employees of  
Alumiprime Windows Limited**, **Registration  
No. 1021005**.

NO Notice requiring a hearing was delivered to  
the Financial Services Tribunal, (the "*Tribunal*"),  
by the Administrator and/or the Employer  
within the time prescribed by subsection 89(6)  
of the *Act*.

**IT IS THEREFORE HEREBY ORDERED** that  
the **Pension Plan for Hourly Employees of  
Alumiprime Windows Limited**, **Registration  
No. 1021005** be wound up in whole, effective

November 24, 1998, for the following reasons:

1. There was a cessation or suspension of  
employer contributions to the pension fund.
2. The employer failed to make contributions  
to the pension fund as required by the *Act* or  
the regulations.
3. The employer is bankrupt within the meaning  
of the *Bankruptcy and Insolvency Act* (Canada).
4. A significant number of members of the  
pension plan ceased to be employed by the  
employer as a result of the discontinuance of  
all or part of the business of the employer or  
as a result of the reorganization of the busi-  
ness of the employer.
5. All or a significant portion of the business  
carried on by the employer at a specific loca-  
tion was discontinued.

**PURSUANT TO** subsection 69(2) of the *Act*, the  
Administrator is required to give notice of this  
Order to the following persons by transmitting  
a copy hereof:

United Steelworkers of America  
25 Cecil Street  
Toronto, ON  
M5T 1N1

Attention: Mr. Mohamed Baksh  
**Union**

Shiner & Associates Inc.  
30 Wertheim Court, Suite 22  
Richmond Hill, ON  
L4B 1B9

Attention: Ms. Debi Geller  
**Trustee in Bankruptcy**

DATED at Toronto, Ontario this 11th day of  
January, 2001.

K. David Gordon  
Director, Pension Plans Branch  
by Delegated Authority from  
Dina Palozzi  
Superintendent of Financial Services



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the “*Act*”);  
**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Act*  
respecting the **Employee Retirement Plan for  
the employees of Regal International Tool &  
Mould Inc., Registration No. 1010198**  
(the “*Plan*”);

**TO:** London Life Insurance Company  
255 Dufferin Avenue,  
London, ON,  
N6A 4K1

**Attention:** Ms. Janice Henderson  
Customer Service Specialist  
**Administrator of the Employee  
Retirement Plan for the employees  
of Regal International Tool &  
Mould Inc.**

**AND TO:** Regal International Tool &  
Mould Inc.  
P.O. Box 820, 5000 Regal Drive,  
Windsor ON,  
N9A 6K7

**Attention:** Mrs. Lorna Briscoe,  
Human Resources Manager

**AND TO:** Regal International Models,  
Fixtures & Prototypes Inc.,  
5110 Halford Road,  
Windsor ON,  
N9A 6J3

**Attention:** Ms. Penny Milicia

**AND TO:** RPT Plastics Inc.  
4165 Walker Road,  
Windsor ON,  
N8W 3T6

**Attention:** Mr. Lawrence Jeun  
**Employers**

## **ORDER**

**ON** the 13th day of November 2000, the  
Superintendent of Financial Services (the  
“Superintendent”) issued a Notice of Proposal  
to make an Order (the “Notice of Proposal”), to  
the Administrator of the Plan, pursuant to sec-  
tion 69 of the *Act*, to wholly wind up the plan  
effective May 1, 1999.

**NO REQUEST** for a hearing in this matter has  
been received by the Tribunal.

**IT IS THEREFORE ORDERED** that the  
Employee Retirement Plan for the employees of  
Regal International Tool & Mould Inc.,  
Registration No. 1010198 be wholly wound up  
effective May 1, 1999.

## **THE REASON FOR THIS ORDER IS:**

1. There was a cessation or suspension of  
employer contributions to the pension fund  
as at May 1, 1999.

**PURSUANT TO** subsection 69(2) of the *Act* the  
Administrator is required to give notice of this  
order to all the members and former members  
of the Plan.

**AND TO:** KPMG Inc.,  
P.O. Box 31  
Commerce Court West, Suite 3300  
Toronto ON,  
M5L 1B2

**Attention:** Geoff Publow  
**Receivers** for Regal International  
Tool & Mould Inc. and RPT Plastics  
Inc. **Trustee in Bankruptcy** for  
Regal International Models,  
Fixtures & Prototypes Inc.



AND TO: Zwaig Associates Inc.  
Suite 1560, The Exchange Tower,  
P.O. Box 17, 130 King St W.,  
Toronto ON,  
M5X 1J5

Attention: Sean Hinkson  
Trustee In Bankruptcy for Regal  
International Tool & Mould Inc.  
and RPT Plastics Inc.

DATED at Toronto, Ontario this 12th day of  
January, 2001.

Dina Palozzi  
Superintendent and CEO  
Financial Services Commission of Ontario





## Consents to Payments of Surplus out of Wound Up Pension Plans

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28* (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Retirement Plan for the Employees of Calcomp(Canada) Inc., Registration No. 0427260**

TO: Calcomp (Canada) Inc  
Attention: Mr. Ron Gellatly  
c/o Pyshon Digital Inc.  
5484 Tomken Road, Unit 30  
Mississauga ON  
L4W 2Z6  
(the "**Applicant**")

## CONSENT

ON or about July 14, 2000 the Superintendent of Financial Services caused to be served on the Applicant a Notice of Proposal dated July 12, 2000 to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Retirement Plan for the Employees of Calcomp (Canada) Inc., Registration No. 0427260 (the "Plan"), to the Applicant in the amount of \$155,565 as at December 31, 1994 adjusted for investment earnings and losses thereon and expenses to the date of payment.

NO notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Plan, of \$155,565 as at December 31, 1994 adjusted for investment earnings and losses thereon and expenses to the date of payment to **Calcomp (Canada) Inc.**

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies me that all benefits and other payments, including any enhancements arising from the surplus sharing agreement, to which members, former members and any other persons are entitled on the termination of the Plan.

DATED at Toronto, Ontario, this 6th day of September, 2000

K. David Gordon  
Director Pension plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services  
c.c. Ms. Michelle Rival, Watson Wyatt



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Employees' Pension Plan for Canadian Bank Note Company, Limited, Registration No. 0232124**

TO: Canadian Bank Note Company,  
Limited  
145 Richmond Road,  
Ottawa, Ontario  
K1A 1A1

Attention: George Donovan  
General Counsel  
(the "**Applicant**")

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Employees' Pension Plan for **Canadian Bank Note Company, Limited**, Registration No.0232124 of \$7,941,500, adjusted for investment earnings and losses thereon and expenses to the date of payment to the **Canadian Bank Note Company, Limited**.

DATED at Toronto, Ontario, this 21st day of September, 2000

K. David Gordon  
Director Pension plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services  
c.c. J. David Vincent, Fasken Campbell Godfrey  
Michael Mazzuca, Koskie Minsky  
Peter Peng, Morneau Sobeco  
Paul Saunders, Buck Consultants

### CONSENT

ON or about August 9, 2000, the Superintendent of Financial Services caused to be served on the Applicant, a Notice of Proposal dated July 31, 2000 to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Employees' Pension Plan for **Canadian Bank Note Company, Limited**, Registration No.0232124 (the "Plan"), to Canadian Bank Note Company, Limited in the amount of \$7,941,500, adjusted for investment earnings and losses thereon and expenses to the date of payment.

NO notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.



## **Declaration that the Pension Benefits Guarantee Fund Applies to Pension Plans – Subsection 83(1) of the PBA**

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under section 83 of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the Pension Plan for the Union Employees of Exothermic Company of Canada Ltd., covered under the United Steel Workers of America, on behalf of Local 8762, Registration Number 0985770 (previously C-10435)

TO: The Imperial Life Assurance Company  
1 Complex Dejardins  
Montreal PQ  
H5B 1E2

Attention: Elaine Desloges, F.S.A., F.C.I.A.  
Actuarial Consultant  
**Administrator of the Pension Plan for the Union Employees of Exothermic Company of Canada Ltd., covered under the United Steelworkers of America on behalf of Local 8762**

And To: Exothermic Company of Canada  
4962 Union Road, Unit #2  
Beamsville ON  
LOR 1B4

Attention: Pierree Vayda  
President  
Union

## **DECLARATION**

### **WHEREAS:**

31. The Pension Plan for the Union Employees of Exothermic Company of Canada Ltd., covered under the United Steelworkers of America, on behalf of Local 8762, Registration Number 0985770 (previously C-104305) (the "Union Employees' Plan") is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act"); and
32. The Union Employees' Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
33. The Pension Plan was wound up effective March 31, 1993; and
34. The Superintendent of Pensions appointed The Imperial Life Assurance Company as the administrator (the "Administrator") of the Union Employees' Pension Plan on December 13, 1996;
35. On October 30, 2000, I issued a Notice of Proposal to Make a Declaration that the Guarantee Fund applies to the Union Employee's Plan (the "Notice of Proposal"); and
36. No Notice requiring a hearing was delivered to the Financial Services Tribunal (the "Tribunal") within the time prescribed by subsection 89(6) of the Act.

**NOW THEREFORE TAKE NOTICE** that I declare pursuant to section 83 and 89 of the Act that the Guarantee Fund applies to the Union Employees Plan for the following reasons:



1. The Supplementary Wind Up Report filed by the Administrator indicates an estimated funding deficiency of \$51,784.83 as at January 1, 2001.
2. The Union Employees' Pension Plan was wound up effective March 31, 1993.
3. On March 31, 1993, Exothermic Company of Canada Ltd. ceased its operations.
4. The Administrator has advised that there are no assets available from the estate of Exothermic Company of Canada Ltd.

DATED at Toronto, Ontario, the 3rd day of January, 2001.

Dina Palozzi

Superintendent of Financial Services





## **Allocations of Money from the Pension Benefits Guarantee Fund – Subsection 34(7) of Regulation 909**

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under section 83 of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting **The Canada Machinery Corporation Salaried Employees' Pension Plan, Registration Number 0910836 (previously C-14249);**

TO: Ernst & Young Inc.  
Ernst & Young Tower  
Toronto-Dominion Centre  
P. O. Box 251, 222 Bay St.  
Toronto ON  
M5K 1J7

Attention: Brian Denega, Senior Vice-President  
**Administrator of The Canada Machinery Corporation Salaried Employees' Pension Plan**

### **ALLOCATION**

WHEREAS on May 9, 2000, I declared, pursuant to section 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act"), that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to **The Canada Machinery Corporation Salaried Employees' Pension Plan, Registration Number 910836 (previously C-14249) (the "Salaried Employees' Pension Plan");**

AND WHEREAS on the 9th day of May, 2000, I allocated from the Guarantee Fund to pay to the Salaried Employees Pension Plan, an amount not to exceed \$294,000.00 (the "First Allocation") as of June 30, 1999 plus interest of 7.5% per annum to the date of payment.

AND WHEREAS the Administrator of the Salaried Employees Pension Plan has advised that the actual cost to fund entitlements under the Salaried Employees Pension Plan will exceed the estimate of the cost to purchase those annuities which was used for the calculations made to determine the First Allocation and that a further allocation is required;

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Salaried Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the *Act* (the "Regulation"), an amount not to exceed \$99,000.00 to provide, together with the first allocation and Ontario assets, for the benefits determined from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 13th day of September, 2000.

Dina Palozzi

Superintendent of Financial Services



## Tribunal Activities

### Appointments of Tribunal Members

Name and Order in Council	Effective Appointment Date	Expiry Date
<b>Milczynski, Martha (Chair)</b> O.C. 1665/99 O.C. 1808/98	October 6, 1999 July 8, 1998	July 7, 2001 July 7, 2001
<b>McNairn, Colin (Vice-Chair)</b> O.C. 1809/98	July 8, 1998	July 7, 2001
<b>Bush, Kathryn M. (Vice-Chair)</b> O.C. 1052/2000 O.C. 1666/99 O.C. 1191/99 O.C. 904/97	May 31, 2000 October 6, 1999 June 17, 1999 May 14, 1997	May 30, 2002** June 16, 2000 June 16, 2000 June 16, 1999
<b>Erlichman, Louis</b> O.C. 2527/98 O.C. 1592/98	December 9, 1998 June 17, 1998	December 8, 2001 December 16, 1998
<b>Forbes, William M.</b> O.C. 520/98	March 25, 1998	March 24, 2001
<b>Gavin, Heather</b> O.C. 11/99	January 13, 1999	January 12, 2002
<b>Greville, M. Elizabeth</b> O.C. 222/99 O.C. 2405/95	January 27, 1999 February 8, 1996	January 26, 2002 February 7, 1999
<b>Martin, Joseph P.</b> O.C. 1810/98	July 8, 1998	July 7, 2001
<b>Moore, C.S. (Kit)</b> O.C. 1591/98	July 1, 1998	June 30, 2001
<b>Robinson, Judy</b> O.C. 1051/2000 O.C. 905/97	May 31, 2000 May 14, 1997	May 30, 2001 May 13, 2000
<b>Stephenson, Joyce Anne</b> O.C. 2409/98 O.C. 1930/95	November 4, 1998 October 28, 1995	November 3, 2001 October 27, 1998
<b>Wires, David E.</b> O.C. 2166/99 O.C. 257/97	February 26, 2000 February 27, 1997	February 25, 2003 February 26, 2000

\*\*Or on the day FSCO/OSC merges



## **Pension Hearings Before the Financial Services Tribunal**

### **Pension Plan for Employees of Monsanto Canada Inc., Registration Number 341230, FST File P0013 – 1998**

On November 30, 1998, the Superintendent issued a Notice of Proposal to Refuse to Approve a Partial Wind Up Report filed by Monsanto respecting a 1997 plant closure. The grounds for the refusal were: (a) the wind up report did not deal with the surplus distribution on partial wind up; (b) the payment of benefit enhancements on wind up to certain members constituted an inequitable distribution of surplus, and an indirect payment of surplus to the employer without following the statutory requirements for the payment of surplus to the employer; and (c) the wind up report provided that the funds relating to benefits of those in the partial wind up group were to remain in the pension plan's fund rather than being distributed by way of a purchase of annuities.

On December 31, 1998, Monsanto Canada Inc. ("Monsanto") requested a hearing before the Financial Services Tribunal in respect of the Notice of Proposal.

A motion to disqualify the Superintendent's expert witness was heard on January 10, 2000. Written reasons dated January 20, 2000 for the dismissal of the motion were published in Volume 9, Issue 2 of the Pension Bulletin.

The hearing was held on January 10 - 12 and February 7 - 11, 2000. The Tribunal issued majority and minority Reasons dated April 14, 2000, which were published in Volume 9, Issue 2 of the Pension Bulletin. In the result, the Tribunal directed the Superintendent to approve the Partial Wind Up Report.

The decision of the Tribunal was appealed to the Superior Court of Justice-Ontario Divisional Court. On March 19, 2001, the Court allowed the appeal on the basis of its conclusion that the first ground set out in the Notice of Proposal ((a) above) was a proper basis for the Superintendent to refuse to approve the Partial Wind Up Report and that the Superintendent was entitled to rely on that ground. In this respect, it adopted the minority Reasons of the Tribunal and directed the Superintendent to carry out the Notice of Proposal to Refuse to Approve.

The Court found that the Financial Services Tribunal majority's interpretation of subsection 70(6) of the *Pension Benefits Act* was unreasonable. The Court also found that the Financial Services Tribunal majority's finding on legitimate expectation misinterpreted the legislation and was an error in law.

Applications have been filed with the Court of Appeal for leave to appeal the decision of the Divisional Court.

### **Ontario Institute for Studies in Education Employee Pension Plan, Registration Number 353854, FST File P0054-1999**

On June 1, 1999, the Governing Council of the University of Toronto requested a hearing regarding the Superintendent's Notice of Proposal dated April 30, 1999 to partially wind up the Plan. A pre-hearing conference was held on September 17, 1999. The Professional Staff Association of the Ontario Institute for Studies in Education, the United Steelworkers of America and the Ontario Public Service Employees Union were granted full party status. The request for Hearing was withdrawn on May 17, 2000.





**The Retirement Plan for Salaried Employees (Consumer Foods) of General Mills Canada, Inc., Registration Number 342042, FST File P0058-1999**

In June 1999, General Mills Canada Inc. requested a hearing regarding the Superintendent's Notice of Proposal dated May 19, 1999 refusing to approve a partial wind up report. The grounds for the refusal were: (a) the partial wind up report did not deal with the treatment of surplus on partial wind up; (b) the payment of benefit enhancements on wind up to certain members constituted an inequitable distribution of surplus, and an indirect payment of surplus to the employer without following the statutory requirements for the payment of surplus to the employer; and (c) proper notice of the partial wind up was not provided to the affected members, and the partial wind up report did not allow the affected members who were entitled to an immediate pension and who receive a "special pension upgrade" to commute their pension benefits.

The Tribunal adjourned the matter *sine die* on May 12, 2000 at the request of the parties.

**Labourers' Pension Fund of Central and Eastern Canada, Registration Number 573188, FST File P0059-1999**

On June 14, 1999, the Labourers' Pension Fund requested a hearing with respect to the Superintendent's Notice of Proposal dated May 18, 1999 proposing to order the Labourers' Pension Fund of Central and Eastern Canada to prepare and file two new actuarial valuation reports with valuation dates of December 31, 1996 and December 31, 1997, and to use certain assumptions and methods in the preparation of these reports. On May 19, 2000, the Superintendant withdrew the Notice of Proposal.

**Ontario Teachers' Pension Plan, Registration Number 345785, FST File P0060-1999**

On June 16, 1999, the Ontario Teachers' Pension Plan Board filed a request for hearing regarding the Superintendent's Notice of Proposal dated May 6, 1999 to order the Ontario Teachers' Pension Plan Board to comply with section 51 and subsection 48(13) of the *Pension Benefits Act* and pay to a deceased member's former spouse certain amounts or benefits under a domestic contract. A pre-hearing conference was held on July 21, 1999 and continued on August 31, 1999. The deceased member's former spouse was granted party status. The hearing was held on March 27, 2000. Reasons for Decision were released on June 9, 2000 and are published in this Pension Bulletin on page 79. The former spouse has appealed this decision to the Superior Court of Justice – Ontario Divisional Court. No date has been set for the appeal yet.

**Consumers Packaging Pension Plan II, Registration Number 998682, FST File P0068-1999**

Consumers Packaging Inc. filed a request for hearing on June 18, 1999 regarding the Superintendent's Notice of Proposal dated April 30, 1999 to refuse to approve a partial wind up report.

On March 1, 2000, the Request for hearing was withdrawn.

Reasons for Decision dated December 8, 2000 in the matter of an Application for an Award of Costs were released and are published in this Pension Bulletin on page 102.





### **Consumers' Gas Ltd., Registration Number 242016, FST File P0076-1999**

On August 19, 1999, the Superintendent issued a Notice of Proposal to refuse to approve a partial wind up report filed by The Consumers' Gas Company Ltd. with respect to the sale of the Telesis Oil and Gas Division of Consumers' Gas. The grounds for the refusal were: (a) the report did not provide for the distribution of the surplus attributable to the partial wind up group; (b) the report did not provide "grow in" to indexation benefits for members who had achieved 55 points under subsection 74(1) of the *Pension Benefits Act* (rather, it provided these benefits only to members who were 55 years old); and (c) the report did not include certain bonuses paid to Telesis employees in the calculation of earnings in determining the commuted value of these employees' pensions.

A pre-hearing conference was held on November 15, 1999, December 2, 1999, and April 3, 2000. A Group of Former Employees of Telesis was added as a party. The pre-hearing reconvened on June 27, 2000 and the matter was adjourned *sine die*.

### **Schering-Plough Healthcare Products Canada Inc. Salaried Employees' Pension Plan, Registration Number 297903, FST File P0085-1999**

On October 14, 1999, the Superintendent issued a Notice of Proposal ordering Schering-Plough Healthcare Products Canada Inc. to amend the partial wind up report with respect to its salaried pension plan as at August 31, 1996, so that the surplus attributable to the partial wind up group would be distributed.

On March 27, 2000 a number of affected plan members applied for standing in the hearing. The matter was adjourned *sine die* on May 10, 2000.

### **The Employees Pension Plan of BICC Phillips Inc., Registration Number 293761, FST File P0092-1999**

On December 20, 1999, BICC Cables Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated November 10, 1999 to refuse to approve a partial wind up of the Plan as at May 17, 1996 in connection with the decision of the employer to close its Brockville factory and terminate the employment of all employees at that location, and to reduce significantly staffing at its Head Office and other locations across Canada commencing in February 1996. The issue in this proceeding was whether those members of the plan affected by the partial wind up, whose age plus years of service exceeded 55, were entitled to special early retirement pensions under the plan.

A pre-hearing conference was held on April 17, 2000. Telephone conferences were held on September 19 and October 10, 2000 and the Hearing was held on October 12, 2000.

Reasons for Decision dated November 16, 2000 were released and are published in this Pension Bulletin on page 97.

A Notice of Appeal of the Decision of the Tribunal was filed by BICC Cables Inc. with the Superior Court of Justice Ontario Divisional Court on December 15, 2000.

The appeal was heard on April 20, 2001, and it was dismissed.

### **Pension Plan for the Employees of the United Jewish Welfare Fund of Toronto and its Affiliated Organizations, Registration Number 321398, FST File P0093-2000**

On December 23, 1999, the United Jewish



Welfare Fund requested a hearing with respect to the Superintendent's Notice of Proposal dated November 10, 1999 proposing to order the Administrator of the Plan to file a number of amendments to the Plan and Trust Agreement within 30 days from the date of the Notice.

The hearing request was withdrawn on February 11, 2000.

**Retirement Plan of Dustbane Enterprises Limited, Registration Number 229419, FST File P0095-2000**

On January 26, 2000, Dustbane Enterprises Limited filed a request for hearing regarding the Superintendent's Notice of Proposal dated December 21, 1999 proposing to order Dustbane Enterprises Limited to pay into the pension fund for the Plan an amount equal to the total of all payments that, under the *Pension Benefits Act*, the regulations and the Plan, are due or that have accrued and have not been paid into the pension fund as at June 1, 1990, plus interest to the date of payment. Such payment was to be made within sixty (60) days from the date of this Proposed Order.

A request for hearing, filed on February 9, 2000 by F. J. Wadden & Sons, was withdrawn on April 4, 2000.

Pre-hearing conferences were held on April 14 and June 2, 2000. A settlement conference was held on July 10, 2000 and a telephone conference was held on July 13, 2000.

Robinson Sanitation filed an Application for Party Status on July 14, 2000 and was granted status.

On June 21, 2000, the Financial Services Tribunal held an oral hearing on a preliminary motion made by Dustbane Enterprises for an Order directing the Superintendent of Financial

Services to respond to seven interrogatories. The Tribunal's Order dated July 18, 2000 is published in this Pension Bulletin on page 126.

The hearing was held on October 3 to 5 and October 16, 2000.

The Tribunal released its decision on February 15, 2001. The majority found that the plan was not a multi-employer pension plan and that Dustbane was therefore liable for the deficit. The dissent found that Dustbane was a multi-employer pension plan, that the distributors were therefore liable for the deficit, but that Dustbane should contribute to the deficit because it had kept the distributors in the dark and because much of the deficit was attributable to actuarial fees. The panel unanimously found that any delay could not excuse compliance with the *Act*.

On March 16, 2001, Dustbane appealed this decision to the Superior Court of Justice, Ontario Divisional Court.

**Brewers Retail Pension Plan for Bargaining Unit Employees, Registration Number 336081, FST File P0099-2000**

On February 24, 2000, Mr. Patrick J. Moore, President of the United Brewers' Warehousing Workers, Local 375W, requested a hearing seeking an Order directing "the Superintendent to order the administrator of the Plan (Brewers Retail Inc.) to cease administering the Plan with an improperly constituted advisory committee and to cause the creation of a properly constituted advisory committee pursuant to the *Act* and formulating documents." The hearing request arose as a result of a letter from the Superintendent dated January 26, 2000 in which the Superintendent stated that there were no grounds under the *Pension Benefits Act* and Plan to order the establishment of an advisory



sory committee. The letter also stated that any issue that Mr. Moore may have with the letter of understanding, which is part of the agreement between Brewers Retail Inc. and United Food and Commercial Worker's Provincial Board (the "UBWW/UFCW"), wherein Brewers Retail Inc. acknowledges that the UBWW/UFCW has a right to appoint a pension committee with membership, roles and responsibilities as set out in the *Pension Benefits Act*, would be a labour issue and not within the Superintendent's jurisdiction.

At a pre-hearing conference held on May 17, 2000, Brewers Retail Inc. and the UBWW/UFCW were granted full party status. At the pre-hearing conference the parties agreed that before the Financial Services Tribunal considered the matter on its merits, it was necessary for it to determine the preliminary issue of whether it had jurisdiction to grant the relief sought in Mr. Moore's Request for Hearing. At the pre-hearing conference, the Superintendent raised the issue of whether notice to former members of the Plan ought to be provided as it appeared that former members of the Plan were not represented.

In a telephone conference held on November 16, 2000, the hearing on the notice issue was scheduled for March 7, 2001. The hearing on the jurisdictional issue was scheduled for September 28, 2001.

Prior to the hearing on the notice issue, the UBWW/UFCW advised that it represented both active and non-active/former members of the Plan. As a result, at the hearing on March 7, the Superintendent, UBWW/UFCW and Brewers Retail Inc. took the position that no additional notice to former members was required in the circumstances. Mr. Moore, however, argued that notice of the proceeding was

still required.

The Tribunal decided that former members had received adequate notice of the proceeding through the existing parties to the proceeding. Reasons for Decision, dated April 10, 2001, were released and will be published in the next Pension Bulletin.

### **London Life Insurance Company Staff Pension Plan, Registration Number 0343368, FST File P0100-2000**

On March 6, 2000, London Life Insurance Company requested a hearing with respect to the Superintendent's Notice of Proposal dated February 17, 2000 proposing to order that the Plan be wound up in part in relation to those members and former members of the Plan who were employed by London Life and who ceased to be employed effective between January 1, 1996 and December 31, 1996 as a result of (i) the reorganization of the business of the London Life, or (ii) the discontinuance of all or a significant portion of the business carried on by London Life at one or more specific locations.

At the pre-hearing conference held on July 11, 2000, The Executive Members of the London Life Members' Committee were granted full party status. Upon a request made by London Life that all information produced by it in response to interrogatories and to a request for disclosure of documents from other parties be kept confidential, the Financial Services Tribunal issued an Order dated July 25, 2000 which is published in this Pension Bulletin on page 91.

The Executive Members of the London Life Members' Committee brought a motion before the Tribunal on August 29, 2000 requesting an order directing London Life to disclose certain





information to them and to the Superintendent. The Tribunal's Order on the motion and the Reasons for Order, both dated September 18, 2000, are published in this Pension Bulletin on page 92.

The hearing was held on December 11 - 15 and December 19 - 20, 2000. Reasons for Decision dated February 7, 2001 were released and are published in this Pension Bulletin on page 115.

The Superintendent and the Executive Members filed a Request for Review, asking the panel to deal with the issues of alleged voluntary terminations and certain office closures that London Life had conceded. On March 16, 2001, the panel issued a decision declining to review its decision, stating that it was more appropriate to deal with these issues once the Partial Wind Up Report had been filed.

**Hudson Bay Diecasting Limited Hourly Employees Retirement Income Plan, Registration Number 362178, FST Number P0103-2000**

On March 17, 2000, CAW-Canada and its Local 1285 requested a hearing in respect of the Superintendent's Notice of Proposal dated February 21, 2000 proposing to order that the Plan be wound up in whole effective September 7, 1995.

Pre-hearing conferences were held on May 5 and June 12, 2000. The pre-hearing conference scheduled for September 11, 2000 was adjourned *sine die* on the consent of all of the parties.

The request for hearing was withdrawn on September 14, 2000.

**Ontario Public Service Pension Plan, Registration Number 208777, FST Number P0116-2000**

On August 2, 2000, the Ontario Pension Board filed a request for hearing in respect of the Superintendent's Notice of Proposal dated July 12, 2000 ordering the Ontario Pension Board to pay Mr. Victor Burns his full pension benefits, with interest payable pursuant to subsection 24(11) of Regulation 909 made under the *Pension Benefits Act*, retroactive to the date of Mr. Burns' retirement from the Ontario Provincial Police ("OPP"), within 60 days from the date of the Order, and on an ongoing basis. An Application for Party Status was filed by Victor Burns on November 9, 2000 and full party status was granted by the Financial Services Tribunal at a pre-hearing conference held on November 23, 2000.

Hearing dates scheduled for April 30 and May 1, 2001 have been adjourned.

**Eaton Yale Limited Pension Plan for Salaried Employees of Cutler-Hammer Canada Operations, Registration Number 440396, FST Number P0117-2000**

On August 4, 2000, Eaton Yale Ltd. filed a request for hearing with respect to the Superintendent's Notice of Proposal dated June 22, 2000 proposing to order that the Plan be wound up in part in relation to those members and former members of the Plan who ceased to be employed by Eaton Yale from February 23, 1994 to January 12, 1995 as a result of the closure of two manufacturing facilities, located at Mount Forest, Ontario and St.-Jean-sur-Richelieu, Quebec, on or about February 23, 1994.

At the request of the parties, this matter was adjourned *sine die* on November 9, 2000.





**Dr. Louis Gliksman (Ontario Public Service Pension Plan, Registration Number 208777 and the Hospitals of Ontario Pension Plan, Registration Number 346007) FST File P0119-2000**

On July 19, 2000, Dr. L. Gliksman requested a hearing regarding the Superintendent's Notice of Proposal dated July 7, 2000 proposing to refuse to make an order, under section 87 of the *Pension Benefits Act*, with respect to Dr. Gliksman's request that the two Plans take certain actions.

A Pre-hearing conference was held on October 2 and November 15, 2000. The Hospitals of Ontario Pension Plan (HOOPP) and the Ontario Pension Board filed Applications for Party Status and were granted full party status.

The request for hearing was withdrawn on January 9, 2001.

**David Horgan (Ontario Public Service Pension Plan, Registration Number 208777) FST File P0120-2000**

On August 11, 2000, David Horgan requested a hearing regarding the Superintendent's Notice of Proposal dated July 12, 2000 proposing to refuse to make an order, under section 87 of the *Pension Benefits Act*, with respect to Mr. Horgan's claim that he is entitled to receive pension benefits from the Plan.

The Ontario Pension Board filed an Application for Party Status on September 19, 2000 and was granted full party status at the pre-hearing conference held on November 23, 2000.

The hearing is scheduled for July 11 - 13, 2001.

**Rupinder Anand and OPSEU Pension Trust:**

On February 6, 2001 Rupinder Anand requested a hearing regarding the Superintendent's Notice of Proposal dated January 4, 2001, proposing

to refuse to make an order under section 87 of the *Pension Benefits Act*, with respect to Mr. Anand's claim that he is eligible to receive pension benefits from the Ontario Public Service Pension Plan.

The OPSEU Pension Trust ("OPT") filed an application for party status on February 14 2001. Counsel for Mr. Anand (who also is counsel for Mr. Horgan) requested that the hearing in this matter be joined with the hearing in Horgan, as the issues in both cases were virtually identical. None of the other parties objected to the joinder. An order granting OPT full party status and joining the hearings, in the Horgan and Anand matters, to be heard concurrently, was signed by the Financial Services Tribunal on March 7, 2001.

**Penberthy Canada Products, Inc., St. Catharines, Ontario, Registration Number C-15244. FST File P0122-2000**

Penberthy Canada Products Inc. filed a request for hearing regarding the Superintendent's Notice of Proposal dated June 22, 2000 proposing to order Penberthy Canada Products, Inc. to pay Mrs. L. Hambling the survivor pension benefits to which she is entitled as a consequence of her deceased husband having elected survivor pension benefits.

A pre-hearing conference was held on November 27, 2000 and January 4, 2001. A settlement conference was held on January 24, 2001, at which Penberthy Canada Products Inc. and the widow reached a tentative settlement.

**Imperial Oil Ltd., FST P0130-2000**

On October 31, 2000, Imperial Oil Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated October 3, 2000 proposing to refuse to approve a Partial Wind Up Report in respect of two Plans of which Imperial Oil is the Administrator.



The stated reasons for the proposed refusal include the failure of each wind up report to do the following: (a) reflect the liabilities associated with all of the members of the Plan whose employment was terminated by Imperial Oil during the wind-up period; (b) apply the grow-in provisions of section 74 of the *Pension Benefits Act* in a proper manner; (c) provide benefits in

accordance with elections made, as required under subsection 72(1) of the *Pension Benefits Act*, among various options including those available as a result of partial wind-up; and (d) provide for the distribution of assets related to the partial wind up group.

A pre-hearing has been scheduled for June 19, 2001.

## FINANCIAL HARDSHIP

Application to the Superintendent of Financial Services for Consent to Withdraw Money from a Locked-in Retirement Account, Life Income Fund, or Locked-in Retirement Income Fund Based on Financial Hardship.

The following Requests for Hearing have been received.

FST File #	Superintendent of Financial Services' Notice of Proposal:	Comments
P0123-2000	To Refuse to Consent, dated August 14, 2000	The Request for Hearing was withdrawn on January 3, 2001.
P0124-2000	To Refuse to Consent, dated August 14, 2000	Reasons for Decision dated December 21, 2000, are published in this bulletin on page 104
P0126-2000	To Refuse to Consent, dated September 15, 2000	Reasons for Decision dated January 9, 2001, are published in this bulletin on page 106.
P0127-2000	To Consent, dated June 6, 2000	Applicant has requested a hearing on the basis that funds received were insufficient. The Request for Hearing was withdrawn on March 22, 2001.
P0132-2000	To Refuse to Consent, dated October 23, 2000	Reasons for Decision dated January 22, 2001, are published in this bulletin on page 108.
P0133-2000	To Refuse to Consent, dated November 6, 2000	Reasons for Decision dated January 26, 2001, are published in this bulletin on page 110.
P0135-2000	To Consent,	Applicant has requested a hearing dated August 25, 2000 on the basis that the funds received were insufficient.



P0136-2000	To Refuse to Consent, dated December 1, 2000	Ongoing
P0137-2000	To Refuse to Consent, dated November 27, 2000	Reasons for Decision dated January 29, 2001, are published in this bulletin on page 112.
P0139-2001	To Refuse to Consent, dated December 12, 2000	Reasons for Decision dated February 27, 2001, are published in this bulletin on page 142.
P0140-2001	To Refuse to Consent, dated December 10, 2000	Reasons for Decision dated January 30, 2001, are published in this bulletin on page 113.
P0141-2001	To Consent, dated December 21, 2000	Applicant has requested a hearing on the basis that the funds received were insufficient.
P0145-2001	To Refuse to Consent, dated December 11, 2000	Reasons for Decision dated February 21, 2001, are published in this bulletin on page 140.
P0148-2001	To Refuse to Consent, dated January 30, 2001	Ongoing



## Financial Services Tribunal Decisions with Reasons

INDEX NO: FST Decision #12 (FST File No. P0060 )

PLAN: Ontario Teachers' Pension Plan Board

DATE OF DECISION: May 31, 2000

PUBLISHED: FSCO Bulletin 10/1 and FSCO website

*(Note: Only FST decisions pertaining to pensions are included in the section)*

*Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28;

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 87 of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act") respecting the Ontario Teachers' Pension Plan, Registration No. 0345785;

**AND IN THE MATTER OF** a Hearing in accordance with subsection 89(8) of the *Act*;

**BETWEEN: ONTARIO TEACHERS' PENSION PLAN BOARD**

**Applicant**

– and –

**SUPERINTENDENT OF FINANCIAL SERVICES**

– and –

**ANNE STAIRS**

**Respondents**

### **BEFORE:**

Martha Milczynski

Chair of the Tribunal and of the Panel

Judith Robinson

Member of the Tribunal and of the Panel

William Forbes

Member of the Tribunal and of the Panel

### **APPEARANCES:**

Freya J. Kristjanson and Markus F. Kremer  
for Ontario Teachers' Pension Plan Board

Deborah McPhail for the Superintendent of  
Financial Services

Arthur D.C. Ross for Anne Stairs

### **HEARING DATE:**

March 27, 2000

## **REASONS**

### **INTRODUCTION**

This hearing relates to the application of subsection 48(13) of the *Pension Benefits Act*, and the pre-retirement death benefit payable upon the death of Mr. Roger Mowbray, a member of the Ontario Teachers' Pension Plan (the "Plan"). For reasons set out below, the Tribunal finds no amount of a pre-retirement death benefit is payable to Mr. Mowbray's former spouse, Ms. Anne Stairs and directs the Superintendent of Financial Services (the "Superintendent") not to issue the Proposed Order dated May 6, 1999.





## FACTS

### Agreed Facts

There was no evidence called at the hearing; the parties relied on an Agreed Statement of Facts which set out in part the following:

1. Anne Stairs and Roger Mowbray were married on May 6, 1961.
2. Roger Mowbray was a member of the Plan effective September 1, 1965.
3. Roger Mowbray and Anne Stairs commenced living separate and apart on July 1, 1988, entered into a Separation Agreement on August 10, 1990 (the "Separation Agreement") and divorced on March 7, 1991.
4. During the marriage of Mr. Mowbray and Ms. Stairs, Mr. Mowbray accumulated 22.995 years of credited service.
5. The terms of the Separation Agreement provided in part, as follows:

#### 10. PENSIONS

- (1) The parties agree that the wife has a substantial interest in the husband's pension with the Teachers' Superannuation Commission. The parties further acknowledge and agree that it is their intention that each of the parties should be liable for income tax on his or her share of the pension payments received. The wife's interest in the pension shall be calculated as follows:

One-half ( $\frac{1}{2}$ ) times twenty five (25) years of married cohabitation during which pension contributions were made, divided by the total number of years (or portion thereof) during which the pension contributions were or will be made, times the pension benefits payable.

The husband shall pay to the wife her share of the pension as he receives payment or benefit under the pension.

- (2) In the event that the husband is assessable for income tax based on the total amount of the pension payments paid by the Teachers' Superannuation Commission (and the wife is not required to include her share of her income) rather than only assessable for income tax on his share of each pension payment, calculated as aforesaid, then the foregoing payments to the wife shall be paid in an amount equal to the gross amount of each payment, before any deductions, times a fraction equal to:

One-half ( $\frac{1}{2}$ ) times twenty-five (25) years of married cohabitation during which pension contributions were made, divided by the total number of months during which contributions were or will be made.

The husband shall pay to the wife the support aforesaid immediately upon receipt of any payment or benefit under the pension and the husband shall continue to be an express trustee for the wife's benefit of her share of each pension payment to the husband from the plan. The quantum of support payable pursuant to this provision shall not be subject to variation whether or not any material change in circumstances occurs for either of the parties and shall be paid to the wife for their joint lives.

- (3) The parties agree to execute any further assurances, authorizations, directions or elections as may be required to permit them to carry out their mutual intention that each party should bear income tax liability in respect of their share of the pension payments.



- (4) In the event a death benefit becomes payable under the pension and the wife is not the only surviving spouse of the husband then the wife will be entitled to an interest in the death benefits as follows:  
twenty-five (25) years of married cohabitation during which pension contributions were made, divided by the total number of years (or portion thereof) during which contributions have been made to date of death, times the death benefit payable.
- (5) The husband shall be trustee of the wife's share in his pension. The husband shall provide the wife with copies of all communication between himself and others respecting the pension within (10) days of such communication.
- (6) The husband shall notify the Teachers' Superannuation Commission of the wife's interest and shall authorize the Teachers' Superannuation Commission to disclose all information concerning his pension to his wife.
6. On September 28, 1992 Mr. Mowbray married Catherine Mowbray.
7. Mr. Mowbray delivered a copy of the Separation Agreement to the administrator of the Plan, the Ontario Teachers' Pension Plan Board (the "Board") on July 14, 1994. There was no evidence in the Agreed Statement of Facts or otherwise that indicated whether or not the Board reviewed the terms of the Separation Agreement or communicated what the Board understood to be the Agreement's unenforceable provisions during the nine months the Board had the Separation Agreement in its files prior to Mr. Mowbray's death.
8. Mr. Mowbray died on April 17, 1995, before commencing his pension under the Plan, but

while remaining a member of the Plan.

9. Catherine Mowbray was the legal spouse of Mr. Mowbray at the time of his death. She did not waive any entitlement to a pre-retirement death benefit under s. 48(14) of the *Pension Benefits Act* and did not sign the Spousal Waiver of Pre-Retirement Death Benefit form, which is prescribed as "Form 4" by the Regulations to the *Pension Benefits Act*.

### **Pension Plan**

The pre-retirement spousal death benefit under the Plan is provided for in section 61 of the Plan, which states:

61. (1) If a member who is entitled to a deferred pension or a disability pension dies before the first day of the month in which the first installment of the pension is due, the person who is the spouse of the member on the date of death is entitled to receive,
    - (a) the benefit described in section 62 in respect of the member's employment, if any, before the 1st day of January, 1987; and
    - (b) the benefit described in section 63, in respect of the member's employment, if any, on or after the 1<sup>st</sup> day of January, 1987.
  - (2) Subsection (1) does not apply if the member and the spouse are living separate and apart on the date of death of the member.
10. The pre-retirement spousal death benefit under the Plan thus consists of two parts – one part relates to the Plan member's service before January 1, 1987 and the other part relates to the member's service on or after January 1, 1987.



11. Section 62 of the Plan provides the spouse of a member who dies before retirement with a monthly lifetime pension based upon the member's service for employment before January 1, 1987:
62. (1) This section applies with respect to that portion of the death benefit that relates to a member's employment before the 1st day of January, 1987.
- (2) The spouse of a member with ten years or more qualifying service is entitled to the survivor pension described in section (3) for the lifetime of the spouse.
- (3) The amount of the survivor pension, before adjustment for inflation, shall be based upon the member's credited service for employment before the 1st day of January, 1987 and shall be one half of the amount of the pension, before adjustment for inflation,
- (a) that would have been paid to the member at the date of death, if the member was at least sixty-five years of age on the date of death; or
- (b) that would have been paid to the member as of the first day of the month following the month in which he or she would have reached sixty-five years of age, if the member was less than sixty-five years of age on the date of death.
- (4) The spouse of a member with less than ten years of qualifying service is entitled to a refund of the member's contributions for employment before the 1st day of January, 1987 together with interest thereon.
12. The amount of the death benefit payable as a survivor pension for pre-1987 service is equal to one half of the benefit the member earned for credit before 1987, after reduction for CPP benefits. At the time of his death, Roger Mowbray had more than ten years of qualifying service with 21.39705 years of pre-1987 credit, including 20.99705 years of CPP credit. The average salary used for this calculation was \$68,686.95.
13. The annual death benefit payable as a spousal survivor pension for Roger Mowbray's pre-1987 service was calculated pursuant to the formulas set out in sections 62 and 42 of the Plan:
- $$2\% \times \text{Average Salary} \times \text{Pre-1987 Credit} - \text{CPP Reduction} \times 50\%$$
- $$0.02 \times \$68,686.95 \times 21.39705 - \$5,031.59 \times 50\% = \$12,181.18 \text{ annual base}$$
14. The current version of Section 63 of the plan provides the spouse of a member who dies before retirement with a choice of either a lump sum payment equal to the commuted value of a pension for credited service after 1987 or an immediate or deferred pension in the amount which could be provided by the lump sum:
63. (1) This section applies with respect to that portion of the death benefit that relates to a member's employment on or after the 1st day of January, 1987.
- (2) The spouse of a member with two years or more qualifying service is entitled to the benefit described in subsection (4).
- (3) The spouse of a member with less than two years of qualifying service is entitled to a refund of the member's contributions for employment on or after the 1st day of January, 1987 together with interest thereon.
- (4) The benefit referred to in subsection (2) is,
- (a) a lump sum payment equal to the commuted value of the deferred pension to which the member was entitled for





credited service for employment on or after the 1st day of January, 1987; or

(b) an immediate or a deferred survivor pension for the lifetime of the spouse, the commuted value of which is at least equal to the commuted value of a pension for credited service for the member's employment on or after the 1st day of January, 1987, calculated as if the member had become entitled to a retirement pension on the date of death.

(5) The spouse may elect the form of benefit to be paid under subsection (4) and a spouse who does not do so within twelve months after the death of the member shall be deemed to have elected to receive an immediate survivor pension.

(6) A spouse who elects to receive a deferred survivor pension may elect to begin to receive the pension at any time up to the month after the month in which the spouse reaches seventy-one years of age.

The version of section 63 of the Plan that was in effect at the time of the Mr. Mowbray's death contained the same provisions, except that the phrase used was "qualifying service" rather than "credited service."

15. The commuted value for Roger Mowbray's post-86 service was calculated based on the following formula:

$$2\% \times \text{Average Salary} \times \text{Years of Credited Service} \\ 0.02 \times \$68,317.82 \times 8.3116 = \$11,356.61$$

16. The actual commuted value depends on the level of interest and inflation rates in effect at the date of death as well as the spouse's date of birth. In this case, the entire post-1986 commuted value was estimated at \$146,961.17.

## **Anne Stairs**

17. In correspondence dated April 24, 1995, Anne Stairs wrote to the Board to inquire about her eligibility for benefits.

18. In correspondence dated May 11, 1995, the Board replied:

My investigation has indicated that you were the former spouse of Mr. Mowbray and are inquiring about survivor benefits payable to you as a result of Mr. Mowbray's death in light of a Separation Agreement we have on file. I regret to inform you that you are not eligible for survivor benefits since the Separation Agreement cannot affect the terms of the defined benefit plan. Under s. 61 of Schedule 1 to the *Teachers' Pension Act*, a spousal death benefit is only payable to Mr. Mowbray's current spouse provided they were not living separate and apart at the date of death.

19. The Board paid both the pre-1987 pre-retirement spousal death benefit as well as the post-1986 pre-retirement spousal death benefit to Catherine Mowbray, and did not pay any portion of the death benefit to Anne Stairs.

20. Anne Stairs sought the assistance of the Financial Services Commission of Ontario in January 1997. On May 13, 1999, the Superintendent of Financial Services served upon the Board a Notice of Proposal to make an Order dated May 6, 1999, that stated, in part:

**I PROPOSE TO ORDER** the Ontario Teachers' Pension Plan Board to comply with section 51 and subsections 48(13) and 87(2)(c) of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act 1997*, S.O. 1997, c. 28 (the "Act") in respect of Ms.





Anne Stairs' right to or interest in benefits provided under sections 48 and 51 of the *Act*, as set out in the domestic contract between Ms. Anne Stairs and her former spouse, Mr. John Roger Mowbray, a domestic contract described in section 51 of the *Act*. The benefits provided under section 48 of the *Act* are in respect [sic] Mr. John Roger Mowbray's service after December 31, 1986. The Ontario Teachers' Pension Plan Board is to comply with section 51 and subsection 48(13) and pay to Ms. Anne Stairs the amounts to which she is entitled in respect of her right to or interest in benefits provided under section 48 and 51 of the *Act* set out in the domestic contract between Ms. Anne Stairs and her former spouse, Mr. John Roger Mowbray, a domestic contract described in section 51 of the *Act*, within sixty (60) days from the date of my Order.

21. On June 14, 1999, the Board delivered a Request for Hearing in respect of the Superintendent's Notice of Proposal, which provided in part:

### Relief Sought

Order directing Superintendent to not issue the Proposed Order; to approve the death benefits paid or payable to Ms. Catherine Mowbray pursuant to the *Act*; and such further and other relief as the Applicant may request and this Tribunal may deem just.

### ISSUES

The issues were framed as follows:

**Issue #1:** Is the Ontario Teachers' Pension Plan Board required to pay to Ms. Anne Stairs an interest in the pre-retirement death benefit relating to the service of her former spouse, Mr. Roger Mowbray, pursuant to ss. 48(13) of the *Pension Benefits Act*?

**Issue #2:** If the answer to issue #1 is "yes", is the Tribunal's jurisdiction limited to considering benefits accrued by Mr. Mowbray after December 31, 1986?

**Issue #3:** If the answer to issue #1 is "yes", is the interest limited to benefits accrued by Mr. Mowbray as at the date of separation, which is the valuation dated under the *Family Law Act*, R.S.O. 1990, Chap. F.3?

**Issue #4:** If the answer to issue #1 is "yes", is the interest, or the jurisdiction of this Tribunal to make an order, limited by subsection 51(2) of the *Pension Benefits Act* to 50% of the benefits accrued between January 1, 1987 and the valuation date under the Separation Agreement of July 1, 1988?

**Issue #5:** In the event this Tribunal orders payment to Ms. Stairs of a pre-retirement death benefit, does this Tribunal have jurisdiction to order Ms. Mowbray to repay to the Ontario Teachers' pension Plan that portion of benefits received by her which relates to entitlements payable to Ms. Anne Stairs? If so, should this Tribunal make such an order?

**Issue #6:** What is the quantum of any of the interests found to be payable? This issue is to be deferred until the Tribunal has decided the five issues listed above. If the Tribunal finds that any of the interests are payable, the Tribunal is to direct that the parties attempt to settle the quantum payable among themselves, with the Tribunal remaining seized if the parties cannot come to an agreement.



## PENSION BENEFITS ACT

The relevant provisions of the *Pension Benefits Act* are as follows:

"Spouse" means either of a man and woman who,

- (a) are married to each other, or
- (b) are not married to each other and are living together in a conjugal relationship,
  - (i) continuously for a period of not less than three years, or
  - (ii) in a relationship of some permanence, if they are the natural or adoptive parents of a child, both as defined in the *Family Law Act*; ("conjoint")

37 (1) A member of a pension plan who meets the qualifications in subsection (2) is entitled to the benefit mentioned in subsection (3).

(2) The qualifications are,

(a) that the member must be a member on or after the 1st day of January, 1988;

(b) that the member must be a member for a continuous period of at least twenty-four months; and

(c) that the member must terminate his or her employment with the employer before reaching the normal retirement date under the pension plan.

(3) The benefit is a deferred pension equal to the pension benefit provided in respect of employment in Ontario or in a designated province,

(a) under the pension plan in respect of employment by the employer after the later of the 31st day of December, 1986 or the qualification date;

(b) under any amendment made to the pension plan after the 31st day of December, 1986; and

(c) under any new pension plan established after the 31st day of December, 1986 for members of the pension plan.

48 (1) If a member or former member of a pension plan who is entitled under the pension plan to a deferred pension described in section 37 (entitlement to deferred pension) dies before commencement of payment of the deferred pension, the person who is the spouse of the member or former member on the date of death is entitled,

(a) to receive a lump sum payment equal to the commuted value of the deferred pension; or

(b) to an immediate or deferred pension the commuted value of which is at least equal to the commuted value of the deferred pension.

(3) Subsections (1) and (2) do not apply where the member or former member and his or her spouse are living separate and apart on the date of the death of the member or former member.

(6) A member or former member of a pension plan may designate a beneficiary and the beneficiary is entitled to be paid an amount equal to the commuted value of the deferred pension mentioned in subsection (1) or (2) if,

(a) the member or former member does not have a spouse on the date of death; or

(b) the member or former member is living separate and apart from his or her spouse on that date.

(7) The personal representative of the member or former member is entitled to receive payment of the commuted value mentioned in subsection (1) or (2) as the property of the member or former member, if the



member or former member has not designated a beneficiary under subsection (6) and,

- (a) does not have a spouse on the date of the member or former member's death; or
- (b) is living separate and apart from his or her spouse on that date.

(13) An entitlement to a benefit under this section is subject to any right to or interest in the benefit set out in a domestic contract or an order referred to in section 51 (payment on marriage breakdown).

(14) A member and his or her spouse may waive the spouse's entitlement under subsection (1) or (2) in the form approval by the Superintendent and, for the purpose, subsections (6) and (7) apply as if the member does not have a spouse on the date of the member's death.

51 (1) A domestic contract as defined in Part IV of the *Family Law Act*, or an order under Part I of that *Act* is not effective to require payment of a pension benefit before the earlier of,

- (a) the date on which payment of the pension benefit commences; or
- (b) the normal retirement date of the relevant member or former member.

(2) A domestic contract or an order mentioned in subsection (1) is not effective to cause a party to the domestic contract or order to become entitled to more than 50 per cent of the pension benefits, calculated in the prescribed manner, accrued by a member or former member during the period when the party and the member or former member were spouses.

## REASONS

### (a) Submissions of the Respondents

Counsel for Ms. Stairs and the Superintendent both submitted that subsection 48(13) of the *Pension Benefits Act* operates to divide and redirect payment of the pre-retirement death benefit otherwise payable in full to an eligible surviving spouse where the deceased plan member had, at some earlier date, entered into a domestic contract that granted an interest in the death benefit to a former spouse.

Counsel for Anne Stairs submitted that the Separation Agreement set out Ms. Stairs' and Mr. Mowbray's intention to deal with Mr. Mowbray's pension in a manner that recognized Ms. Stairs' "substantial interest" in the pension. Counsel asked the Tribunal to enforce the Separation Agreement as drafted and at the hearing requested that the Tribunal order that Ms. Stairs receive a full 25/30ths of the pre-retirement death benefit for all pre-1987 and post-1986 service, with no 50% limitation and no restriction of the division to the benefit accrued during the marriage up to the date of separation.

Counsel for the Superintendent submitted that in accordance with section 37 of the *Pension Benefits Act*, the *Act* draws a clear and unambiguous distinction between pre-1987 and post-1986 rights and entitlements that may be enforced under the *Act*. Counsel for the Superintendent further submitted that where terms of a domestic agreement are unenforceable as drafted under the *Pension Benefits Act*, the Superintendent could, in effect, vary the terms of the domestic agreement and, as in the case of the Separation Agreement in issue, order that a smaller portion than what had been agreed to or sought be paid. Thereby, counsel for the





Superintendent requested that the Tribunal uphold the Proposed Order that Ms. Stairs receive 50% of the death benefit payable in respect of Mr. Mowbray's post-1986 service accrued to the date of separation on July 1, 1988 – that being 50% of Mr. Mowbray's benefit accrued over some 18 months.

### **(b) Analysis**

With respect to the issue of credit splitting, the *Pension Benefits Act* does not permit payment pursuant to a division of pension credits on marriage breakdown prior to the benefit becoming payable to the pension plan member and consequently, may require a former spouse who has not otherwise been paid out of a plan member's other assets to rely upon an "if and when" approach. However, the Separation Agreement entered into by Ms. Stairs and Mr. Mowbray presents further difficulties regardless of their intention to divide his pension, including:

- (a) the provision dealing with benefits payable to Ms. Stairs upon Mr. Mowbray's death does not distinguish between pre-retirement and post-retirement entitlements, and thereby purports to grant an interest to Ms. Stairs in a post-retirement death benefit in the event that Mr. Mowbray had another spouse as at the date of his retirement and upon his subsequent death – a provision clearly unenforceable in any amount under the *Pension Benefits Act*;
- (b) it fails to address Ms. Stairs' interest in the event of Mr. Mowbray's pre-retirement or post-retirement death where he did not have another surviving spouse; and
- (c) it sets out incorrectly the period of Mr. Mowbray's pension accrual that is subject to division under the *Pension Benefits Act*.

While the words of subsection 48(13) that state an entitlement to a pre-retirement death benefit is subject to any right to or interest in the benefit set out in a domestic contract or order under Part I of the *Family Law Act* may lend themselves to the interpretation advanced by the Respondents, the Tribunal prefers a "plain reading" interpretation of the legislation. This is one that takes into account the priority of entitlements expressed in section 48 of the *Act*, and the fact that it cannot be simply any domestic contract that can override or interfere with the payment of pre-retirement death benefits that are otherwise payable under the terms of a pension plan and the *Pension Benefits Act*.

The scheme of priorities in section 48 of the *Pension Benefits Act* is clear and provides that a pre-retirement death benefit payable thereunder is first an entitlement of a surviving spouse so long as that spouse and the member were not living separate and apart as at the date of death and so long as there had been no waiver of the entitlement in the form and manner prescribed by the *Pension Benefits Act*. As in the case of section 44 of the *Act* and post-retirement death or survivor benefits, in the absence of an express waiver, priority is given to the eligible spouse.

In accordance with subsection 48(6) of the *Pension Benefits Act*, only where there is no eligible surviving spouse can a plan member determine who should receive payment of the pre-retirement death benefit by designating a beneficiary. In the absence of an eligible spouse and a designated beneficiary, subsection 48(7) of the *Pension Benefits Act* provides that the pre-retirement death benefit is payable to the deceased plan member's personal representative to be included as part of the member's estate.





As noted, subsection 48(13) of the *Pension Benefits Act* provides that an entitlement to a benefit under any part of section 48 is subject to any right to or interest in the benefits set out in a domestic contract or order under Part I of the *Family Law Act*. Subsection 48(13) of the *Act* does not identify in any manner the parties to the domestic contract that can interfere with an entitlement to a pre-retirement death benefit, but cannot be taken to mean any domestic contract. In that regard, this provision must refer to domestic contracts and court orders that bind or are enforceable against the person to whom the pre-retirement death benefit is payable. In the case of the Separation Agreement between Anne Stairs and Roger Mowbray, the Agreement attempts to redirect payment of a portion of the benefit to which only Ms. Mowbray is entitled under the terms of the pension plan and subsection 48(1) of the *Pension Benefits Act*. There is an issue of privity as Ms. Mowbray was not a party to the Separation Agreement, and did not otherwise waive her entitlement at a later date. As is set out in *Fridman, The Law of Contract in Canada*, 4th ed. (Carswell, 1999) at p. 197:

...none but parties to a contract can sue on the contract or any of its terms, and consequently none but a party may be subjected to liability.

The Tribunal also accepts the submissions of counsel for the Board and authority offered, *Dick v. Dick* [1993] O.J. No. 140 (Q.L.) (Gen. Div.), that held that death benefits are not considered or included as "property" for the purposes of Part I of the *Family Law Act*. In the present case, Mr. Mowbray had no proprietary or other interest in the pre-retirement spousal death benefit and therefore could not grant Ms. Stairs any part of or interest in that entitlement

by way of contractual agreement. The principle that no person can give away something which they do not own (*nemo dat quod non habet*) applies. At best, Mr. Mowbray could designate a beneficiary for payment of pre-retirement death benefits under ss. 48(6) of the *Pension Benefits Act*, but only in the absence of an eligible surviving spouse as at the date of his death.

To deprive or interfere with Ms. Mowbray's entitlement to a spousal pre-retirement death benefit under the Plan on the grounds of a domestic contract between Mr. Mowbray and a former spouse would require a clear expression of legislative intention. In this regard, *The Berton Dress Inc. v. The Queen*, [1953] Ex. C.R. 83; *Rex v. Hladych*, [1942] 3 D.L.R. 299 (Sask. C.A.); and *Hickey v. Stalker* (1923), 53 O.L.R. 414 (App. Div.) are applicable, and in *Toronto Transit Commission v. Aqua Taxi Limited et al*, [1955] O.W.N. 857 (H.C.J.) it was noted at page 859-860:

It is trite law that the common law rights of the subject are not held to have been taken away or affected by a statute unless it is expressed in clear language or must follow by necessary implication, and in such cases only to such an extent as may be necessary to give effect to the intention of the Legislature thus clearly manifested. It is presumed that where the objects of an act do not obviously imply a contrary intention the Legislature does not desire to confiscate the property or to encroach upon the rights of persons, and it is therefore expected that if the contrary is intended it will be made manifest, if not in express words, at least by clear implication and beyond reasonable doubt. If the statute is ambiguous, the court should lean to the interpretation which will support existing rights.



In our view, sub-section 48(13) of the *Pension Benefits Act* does not express the required clear and unequivocal Legislative intention to take away or interfere with an entitlement to a pre-retirement death benefit that is payable to a person (an eligible spouse as at the date of death or designated beneficiary), where the domestic contract that would interfere with that entitlement is between the deceased pension plan member and another party, a former spouse.

Counsel for the Superintendent pointed out the lack of a provision similar to subsection 48(13) in the scheme of post-retirement benefits set out in section 44 of the *Pension Benefits Act* as an indication of the Legislature's intention to permit a former spouse to "trump" an existing spouse's entitlement only where the member has died prior to retiring. Counsel also relied upon *Suchostawsky v. Metropolitan Life Insurance Co.*, [1993] O.J. No. 1650 (Q.L.) (Gen. Div.). Clearly, in cases of post-retirement death of the plan member where there is a subsequent spouse as at the date of retirement who has not executed a waiver, a domestic contract between the member and a former spouse that purported to grant an interest in the survivor benefit to the former spouse is unenforceable under the *Act*: *Britton Estate v. Britton* (1993), 1 C.C.P.B. 236 (Gen. Div.), affirmed on this point, (1995) 16 R.F.L. (4th) 266 (Div. Ct.). In *Suchostawsky*, the court enforced a provision in a divorce judgment so as to require payment of a portion of a pre-retirement death benefit to a former spouse, even though there was an eligible spouse as at the date of death. However, there is little in the reasons to indicate how the court came to this conclusion. The result is also inconsistent with the high priority given to spousal entitlements created either as at the date of death in the case of pre-retirement

benefits or as at the date of retirement in the case of post-retirement survivor benefits.

To adopt the Superintendent's interpretation would be to accept that the Legislature somehow intended to establish a regime where the ability of a former spouse to enforce certain rights under a domestic contract and to deprive an otherwise eligible existing spouse is dependent upon forces beyond anyone's control: the timing of the plan member's death (pre- or post-retirement). The Tribunal cannot accept that interpretation and the uncertainty that it would cause. Consequently, the provisions in the Separation Agreement as they relate to the payment of pre-retirement death benefits are not effective to give rise to any rights under subsection 48(13) of the *Pension Benefits Act*.

Subsection 48(13) would only divide payment of an entitlement to a pre-retirement death benefit payable to an eligible surviving spouse where it was the surviving spouse who was a party to the domestic contract or was bound by or subject to an order under Part I of the *Family Law Act* requiring such division. For example, where the pension plan member has entered into a cohabitation agreement or a marriage contract with a person who was their spouse on the date of their death, the death benefit would vest in the spouse, and would be subject to the terms of the cohabitation agreement or marriage contract, which might limit the spouse's entitlement to the death benefit. The cohabitation agreement or marriage contract might provide that the pre-retirement death benefits are to be paid to the member's adult children or former spouse, rather than to the surviving spouse.

The Tribunal is sympathetic to the position Ms. Stairs finds herself in but having found the Board's interpretation of ss. 48(13) of the



*Pension Benefits Act* to be the proper one, the Tribunal must find that she is not entitled to payment of any portion of the death benefit.

## **ORDER**

Accordingly, the answer to the first issue is in the negative and it is not necessary to address issues 2 through 6. The Tribunal directs that the Superintendent refrain from issuing the Order contained in the Notice of Proposal dated May 6, 1999.

At the conclusion of the hearing, counsel for Ms. Stairs requested an opportunity to address the issue of costs. The Tribunal remains seized with respect to the matter of costs in the event any party wishes to make submissions.

DATED at Toronto, this 31st day of May, 2000.

Martha Milczynski

Chair, Financial Services Tribunal

Judith Robinson

Member, Financial Services Tribunal

William Forbes

Member, Financial Services Tribunal





**INDEX NO.:** FST Decision #13 (FST File No. P0100-2000)

**PLAN:** London Life Insurance Company Staff Pension Plan  
Registration No. 0343368

**DATE OF DECISION:** July 25, 2000

**PUBLISHED:** FSCO Bulletin 10/1 and FSCO website

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 ("the Act");

**AND IN THE MATTER OF** a proposal by the Superintendent of Financial Services to make an Order under Section 69 of the *Act* respecting the London Life Insurance Company Staff Pension Plan, Registration No.0343368

**AND IN THE MATTER OF** a Hearing in Accordance with subsection 89(8) of the *Act*.

**BETWEEN:** LONDON LIFE INSURANCE COMPANY  
Applicant  
– and –  
SUPERINTENDENT OF FINANCIAL SERVICES AND THE EXECUTIVE MEMBERS OF THE LONDON LIFE MEMBERS' COMMITTEE, ALEX MURPHY, DON MATHEWSON AND BARBARA MCGEE  
Respondents

## ORDER

**UPON REQUEST** made by London Life Insurance Company ("London Life") for an order that all information produced by it in response to interrogatories posed by the Superintendent of Financial Services (the "Superintendent") and in response to a request for disclosure of documentation made by Alex Murphy ("Murphy"), Don Mathewson

("Mathewson") and Barbara McGee ("McGee") be held confidential by the parties was heard at the pre-hearing conference held on July 11, 2000.

**ON BEING ADVISED THAT** none of the parties opposed the order sought by London Life.

**IT IS ORDERED THAT** all information produced by London Life in response to interrogatories posed by the Superintendent and in response to a request for disclosure of documentation made by Murphy, Mathewson and McGee (the "Confidential Information") shall, except as otherwise required by law, be kept confidential by the parties to this proceeding and their counsel and shall not be disclosed to any other person for any purpose whatsoever except as authorized by further order of this tribunal or agreement by London Life.

**IT IS FURTHER ORDERED THAT** prior to filing any Confidential Information with this Tribunal or referencing the Confidential Information in any written submissions to be filed with this Tribunal, counsel for the Superintendent and/or Murphy, Mathewson and McGee will provide reasonable notice to counsel to London Life of its intention to do so, so that London Life has an opportunity to make submissions to the Tribunal as to the way in which such Confidential Information is filed with the Tribunal.

DATED the 25th day of July, 2000 at the City of Toronto, in the Province of Ontario,  
Martha Milczynski





**INDEX NO.:** FST Decision #14 (FST File No. P0100-2000)

**PLAN:** London Life Insurance Company Staff Pension Plan,  
Registration No. 0343368

**DATE OF DECISION:** September 18, 2000

**PUBLISHED:** Bulletin 10/1 and FSCO website

**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended by the *Financial  
Services Commission of Ontario Act*, 1997, S.O.  
1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the  
Superintendent of Financial Services to make  
an order under Section 69 of the *Act* respecting  
London Life Insurance Company Staff Pension  
Plan, Registration No. 0343368 (the "Plan");

**AND IN THE MATTER OF** a Hearing in  
Accordance with subsection 89(8) of the *Act*.

**BETWEEN:** LONDON LIFE INSURANCE  
COMPANY  
Applicant  
– and –  
SUPERINTENDENT OF FINAN-  
CIAL SERVICES AND THE  
EXECUTIVE MEMBERS OF THE  
LONDON LIFE MEMBERS'  
COMMITTEE, ALEX MURPHY,  
DON MATHEWSON AND  
BARBARA MCGEE  
Respondents

#### **BEFORE:**

Mr. Colin H.H. McNairn, Vice Chair of the  
Tribunal and Chair of the Panel  
Mr. Louis Erlichman, Member of the Tribunal  
Mr. C.S. (Kit) Moore, Member of the Tribunal

#### **APPEARANCES:**

For the Executive Members of the London Life  
Members' Committee: Ms. Dona L. Campbell

For the Superintendent of Financial Services:  
Ms. Deborah McPhail

For London Life Insurance Company:  
Mr. Jeffrey W. Galway

#### **HEARING**

August 29, 2000

#### **DATE:**

Toronto, Ontario

#### **REASONS FOR ORDER**

##### **The Background**

On August 29, 2000 the Tribunal held an oral hearing on a preliminary motion, made by the Executive Members of the London Life Members' Committee (the "Executive Members"), for an order directing London Life Insurance Company ("London Life") to disclose certain information in connection with this proceeding. At the conclusion of the hearing, after receiving submissions from all the parties, the Tribunal made the order set out in Appendix A (the "Order") and undertook to provide written reasons for that Order.

The proceeding to which the Order relates is a request for a hearing filed by London Life pursuant to subsection 89(8) of the *Pension Benefits Act*, as amended (the "Act"). That request concerns a Notice of Proposal by the Superintendent of Financial Services (the "Superintendent") to order the London Life Insurance Company Staff Pension Plan,



Registration Number 0343368 (the "Plan") to be wound up in part in relation to those members and former members of the Plan who were employed by London Life and who ceased to be so employed effective between January 1, 1996 and December 31, 1996 (or the date the last Plan member ceased such employment) as a result of the reorganization of the business of London Life or the discontinuance of the business carried on by it at one or more specific locations.

At a pre-hearing conference held on July 11, 2000, the parties agreed that the issues to be determined in the proceeding include the following:

- (a) Did a significant number of members of the Plan cease to be employed by London Life as a result of a reorganization or a discontinuance of all or part of London Life's business at any time between January 1, 1996 and December 31, 1996, pursuant to clause 69(1)(d) of the *Act*?
- (a.1) Did those who "voluntarily" left employment with London Life through resignation, early retirement, or otherwise, cease to be employed by London Life within the meaning of clause 69(1)(d) of the *Act* as a result of a reorganization or discontinuance of all or part of London Life's business?
- (b) Was all or a significant portion of the business carried on by London Life at one or more specific locations discontinued at any time between January 1, 1996 and December 31, 1996, pursuant to clause 69(1)(e) of the *Act*?
- (c) If the answer to (a), (a.1), or (b) is yes, should the Tribunal, under subsection 89(9) of the *Act*, direct the Superintendent to order a partial wind-up of the Plan?

- (d) If the answer to (a) is yes, what are the appropriate commencement and end dates for the partial wind-up order concerning the Plan?

### Disposition of the Motion

London Life resisted disclosing certain information sought by the Executive Committee on this motion on the basis that it constitutes personal information of Plan members who served as administrative staff during the period 1995-1997, specifically their names and addresses, termination dates and reasons for termination, if they were terminated during the period, and payroll information relating to such members. London Life pointed to payroll information as being particularly sensitive.

We set out a three-part test for determining whether pre-hearing disclosure of information should be made in our reasons for orders, dated June 21, 1999, in *Monsanto* (FST File No. P0013). The first two parts of that test have been clearly met in respect of the personal information in this case. In particular, the information is,

arguably relevant to one or more of the issues in the proceeding and those issues are not frivolous (the issues having been agreed among the parties at the pre-hearing conference, as noted above), and

sufficiently particularized that the party from whom the information is requested should be able to respond efficiently and with a reasonable degree of precision.

The information sought is arguably relevant for the purpose of deciding which Plan members might qualify to be counted for determining whether a partial wind-up should be ordered and for determining who should be properly included in any partial wind-up group. These



determinations appear to be required in order to resolve the issues raised in this proceeding.

The final part of the test is satisfied if the information is not privileged. Privilege will arise if the information consists of communications where,

the communications originate in a confidence that they will not be disclosed,

that confidence is essential to the full and satisfactory maintenance of the relationship between the parties to the communications, the relationship is one that in the opinion of the community ought to be “sedulously fostered”, and

the injury to the relationship that would result from disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of the proceedings. (See *Slavutych v. Baker* (1975), 55 D.L.R. (3d) 224, at p. 228 (Supreme Court of Canada))

Most of the personal information at issue on this motion – the termination dates of employees, the reasons for their termination, and payroll information – did not originate in communications from the affected employees but was generated by London Life and, therefore, cannot have the benefit of privilege. With respect to the balance of the personal information – the addresses of those who were employees during the relevant period, in association with their names – we are of the opinion that any injury to the employer-employee relationship that could result from disclosure would not be greater than the benefit gained for the correct disposal of these proceedings if such disclosure were made. Therefore, the last element of the test for privileged communications is not satisfied. We express no opinion as to whether

the other elements of that test are satisfied in the circumstances of this case.

London Life also argued that it was under an obligation of confidentiality in respect of the personal information at issue here that ought to be taken into account by the Tribunal.

Specifically, it referred to its privacy guidelines which indicate, among other things, that London Life does not disclose personal information, including that received from employees, without consent except in three situations, one of which is where disclosure is “required by law”. Even if we are entitled to have regard to these guidelines, in deciding whether to order disclosure of personal information sought in this case, the guidelines purport to apply only to personal information about employees when it was received from employees. As noted above, most of the personal information with which we are concerned on this motion was not provided by employees. In any event, the guidelines qualify the non-disclosure commitment by providing an exception when disclosure is required by law. Any order of disclosure that we make on this motion will have the effect of requiring disclosure by law, with the result that London Life’s compliance with that order will not be at variance with the self-imposed restrictions under its privacy guidelines.

Finally, London Life suggested, as an alternative to the order requested by the Executive Committee, an order directing the disclosure of the personal information in question only to the Superintendent, who could then make the appropriate contact with any additional Plan members who might qualify to be counted in determining whether a partial wind-up should be ordered and for determining who should be included in any partial wind-up group. We are





reluctant to make any order that affords any of the parties the benefit of more disclosure than another party receives.

Although requested to do so by the Executive Committee, we make no order with respect to disclosure of the costing of Plan amendments or Plan benefits during the applicable period or with respect to the discovery of an official of London Life who has knowledge of the termination and hiring practices of London Life from 1995-1997. We expect that the relevant information that might be elicited in those ways can be agreed upon and dealt with by the parties. If any issues remain that cannot be resolved, they can, of course, be brought to this panel of the Tribunal as it will remain seized of disclosure issues that any of the parties may wish to raise in this proceeding.

The Executive Committee and London Life both requested costs on this motion, but agreed at the end of the hearing on the motion to postpone argument on those requests.

DATED the 18th day of September, 2000 at the City of Toronto, Province of Ontario.

Colin H. H. McNairn,  
Chair

Louis Erlichman,  
Member

C.S. (Kit) Moore  
Member







## Appendix A

### Order

London Life Insurance Company is hereby ordered to disclose to the Executive Members of the London Life Members' Committee and to the Superintendent of Financial Services the following, within three weeks of the date of this order:

1. The names, addresses, termination dates and reasons for termination of former administrative staff members of the London Life Insurance Company Staff Pension Plan, Registration No. 1343368 (the "Plan") for the period 1995-1997; and
2. Payroll records relating to administrative staff members of the Plan for the period 1995-1997.

DATED this 29th day of August, 2000.



**INDEX NO.:** FST Decision #15 (FST File No. P0092-1999)

**PLAN:** Employees Pension Plan of BICC Phillips Inc.,  
Registration 293761

**DATE OF DECISION:** November 16, 2000

**PUBLISHED:** Bulletin 10/1 and FSCO website

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**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended by the *Financial  
Services Commission of Ontario Act*, 1997, S.O.  
1997, c. 28 (the “Act”);

**AND IN THE MATTER OF** a Partial Plan Wind-  
Up Report submitted by BICC Cables Canada  
Inc. to the Superintendent of Financial Services  
in respect of the Employees Pension Plan of  
BICC Phillips Inc., Registration Number 293761  
(the “Plan”);

**AND IN THE MATTER OF** a Hearing in  
accordance with subsection 89(8) of the *Act*.

**BETWEEN:** **BICC CABLES CANADA INC.** ‘  
Applicant  
– and –  
**SUPERINTENDENT OF  
FINANCIAL SERVICES**  
Respondent

#### **BEFORE:**

C. S. (Kit) Moore, Chair of the Panel and  
Member of the Tribunal  
William M. Forbes, Member of the Tribunal  
Colin H. H. McNairn,  
Vice Chair of the Tribunal

#### **APPEARANCES:**

For BICC Cables Canada Inc.:  
James D. G. Douglas, Markus F. Kremer  
For the Superintendent of Financial Services:  
Deborah McPhail

#### **HEARING HELD:**

October 12, 2000  
Toronto, Ontario

#### **REASONS FOR DECISION**

##### **The Background**

As a result of a plant closure and downsizing, BICC Cables Canada Inc. (“BICC”) (formerly BICC Phillips Inc.) prepared a Partial Wind-Up Report dated June, 1999 (the “Partial Wind-Up Report”) in respect of a partial wind-up as at May 17, 1996 (the “Partial Wind-Up”) of the Employees Pension Plan of BICC Phillips Inc., Registration No. 293761 (the “Plan”) (now called the Employees Pension Plan of BICC Cables Canada Inc.). The Partial Wind-Up Report was filed with the Superintendent pursuant to the provisions of the *Act*.

On November 10, 1999, the Superintendent of Financial Services (the “Superintendent”) issued a Notice of Proposal to Refuse to Approve the Partial Wind-Up Report (the “Notice of Proposal”) because the Report made no provision for payment of certain special early retirement pensions referred to in section 7.3 of the Plan, for those Plan members affected by the Partial Wind-Up whose age plus years of continuous employment or membership in the Plan totalled at least fifty-five at the effective date of the Partial Wind-Up.

Under the authority of subsection 89(6) of the



Act, BICC requested a hearing before the Financial Services Tribunal in respect of the Notice of Proposal. The Tribunal received written submissions from the parties, namely BICC and the Superintendent, and heard their oral arguments at a hearing held October 12, 2000. The Tribunal also received letters of comment from other interested persons.

### The Facts

BICC operated the Plan, amending it in 1992 to provide for a "special early retirement pension," as set out in section 7.3 of the Plan. The text of that section is reproduced below under the heading "The Principal Plan Provision at Issue."

The Partial Wind-Up Report made no provision for the payment of special early retirement pensions to any of those members of the Plan affected by the Partial Wind-Up nor did it value any such pensions.

On July 19, 1999, the Superintendent authorized the distribution of the assets representing the defined benefit entitlements under the Plan to the members, former members and other persons affected by the Partial Wind-Up in accordance with the Partial Wind-Up Report, "conditional upon additional adjustments to the benefits of affected members and the employer funding the additional cost, should it be determined that the Special Early Retirement Pension benefit must be provided on wind up."

### The Issues

At a pre-hearing conference held on April 17, 2000, the parties agreed on the wording of the substantive issues to be addressed in this proceeding. That wording was included in the pre-hearing conference memorandum as follows:

- (1) What is the proper interpretation of section 7.3 of the Plan?
- (2) Should this Tribunal direct that the

Respondent [the Superintendent] carry out the proposal set out in the Notice of Proposal?

### The Principal Plan Provision at Issue

Section 7.3 of the Plan sets out the requirements for determining the special early retirement date and eligibility for a special early retirement pension, as follows:

#### 7.3 Special Early Retirement Date

If the Continuous Service of a Member terminates before normal retirement date under special circumstances as consented by the Company,

- (a) the Member will be considered to have retired early for the purposes of the Plan on his special early retirement date which is the first day of the month coincident with or next following the month in which the Member's Continuous Service terminates, and
- (b) the Member will be entitled to receive a special early retirement pension.

For the purposes of the Plan, "Continuous Service" means an uninterrupted period of employment (sections 2.9 and 5.1), a "Member" means an employee or former employee who has become a member of the Plan and continues to be entitled to benefits under the Plan (section 2.29) and "normal retirement date" means the first day of the month coincident with or next following a Member's 65th birthday (section 7.1).

### The Principal Statutory Provisions that are Relevant

The provisions of the Act that are particularly relevant to this proceeding are as follows:

- 40.-(1) A pension plan may provide the following ancillary benefits:



5. Early retirement options and benefits in excess of those provided by section 41 (early retirement option).

41.-(1) A former member is entitled to elect to receive an early retirement pension under the pension plan if he or she,

(a) terminated employment on or after the 1st day of January, 1988;

(b) is entitled to a deferred pension under this Act; and

(c) is within ten years of attaining the normal retirement date.

74.-(1) A member in Ontario of a pension plan whose combination of age plus years of continuous employment or membership in the pension plan equals at least fifty-five, at the effective date of the wind up of the pension plan in whole or in part, has the right to receive,

(a) a pension in accordance with the terms of the pension plan, if, under the pension plan, the member is eligible for immediate payment of the pension benefit;

(b) a pension in accordance with the terms of the pension plan, beginning at the earlier of,

(i) the normal retirement date under the pension plan, or

(ii) the date on which the member would be entitled to an unreduced pension under the pension plan if the pension plan were not wound up and if the member's membership continued to that date; or

(c) a reduced pension in the amount payable under the terms of the pension plan beginning on the date on which the member would be entitled to the reduced pension under the pension plan if the pension plan were not wound up and if the member's membership continued to that date.

74.-(7) For the purposes of this section, where the consent of an employer is an eligibility requirement for entitlement to receive an ancillary benefit, the employer shall be deemed to have given the consent.

## The Arguments

BICC argued that section 7.3 of the Plan is intended to provide special early retirement benefits to Plan members if their continuous service is terminated in a situation involving special circumstances determined and consented to by the employer. As BICC did not make that determination, BICC took the position that none of the members of the Plan affected by the Partial Wind-Up was entitled to receive a special early retirement pension under section 7.3 of the Plan. BICC then argued that the deemed consent in subsection 74(7) of the Act does not operate to confer such an entitlement for two reasons. First, the Act cannot supply the determination that "special circumstances" exist under section 7.3 of the Plan, as that determination is for BICC to make in its discretion. Second, subsection 74(7) operates only where the consent of an employer is an eligibility requirement for an "ancillary benefit." BICC maintained that a special early retirement pension under section 7.3 of the Plan is not an "ancillary benefit" as section 7.3 does not confer early retirement options or benefits "in excess of" those provided by section 41 of the Act and does not limit eligibility to Plan members of a pension plan who are within ten years of normal retirement, which is a limiting factor in section 41.

The Superintendent argued that "special circumstances" in section 7.3 of the Plan logically means circumstances that are special in the sense that they would not entitle a member to an early retirement pension under any other





provisions of the Plan. Therefore, the consent of BICC called for by section 7.3 is a consent to early termination and need not involve a determination of “special circumstances.”

Consequently, subsection 74(7) of the *Act* can operate to deem such consent to be given, in the event of the Partial Wind-Up. The Superintendent argued that subsection 74(7) applies in this case because the early retirement pension under section 7.3 of the Plan is a true “ancillary benefit”; it affords an option “in excess of” the option provided under section 41 of the *Act* in that it provides for a special early retirement pension for a Plan member more than ten years from normal retirement.

## Reasoning and Results

The Plan contains no definition of the term “special circumstances” as used in section 7.3 nor any statement of the purpose of that section that would assist in understanding the meaning of the section. Section 7.3 must, therefore, be interpreted in the overall context of the Plan without the benefit of such aids.

We agree with the Superintendent that the most reasonable interpretation of section 7.3, taken in context, is that it provides for a special early retirement pension in the event that a member’s continuous service terminates before the normal retirement date in circumstances in which an early retirement pension would not otherwise be payable under the Plan. Other sections of the Plan (sections 7.2 and 7.4) provide for an early retirement pension or an unreduced early retirement pension for a Plan member whose continuous service terminates before the normal retirement date and who meets the age or age and service qualifications, prescribed by the relevant section, at the time of termination. Therefore, the “special circumstances” to which section 7.3 logically relates are those other

circumstances that do not qualify a member for an early retirement pension under another section of the Plan. The circumstances of those members of a partial wind-up group who are in that position can, therefore, be said to be “special circumstances” in the sense of section 7.3.

If the term “special circumstances” in section 7.3 of the Plan has the meaning set out above, there is no need for BICC to determine the scope of the term on an ad hoc basis by declaring “special circumstances” to exist for a particular member or class of members. Rather, the term speaks for itself and is capable of application in a particular case without any consent or other determination on the part of BICC.

In our view, the consent of the employer required by section 7.3 of the Plan refers to the early termination of the continuous service of a member under special circumstances. Even if special circumstances exist in respect of a member whose continuous service terminates before the normal retirement date, that member does not have a right, under section 7.3, to a special early retirement pension, unless BICC also gives its consent to the early termination of membership.

We are, therefore, in agreement with the Superintendent’s interpretation of section 7.3 of the Plan. Had we been of the opinion that the interpretations of section 7.3 of the Plan urged by BICC and the Superintendent were equally compelling, we would still have favoured the Superintendent’s interpretation on the basis that any ambiguity should be resolved against BICC as the drafter of the Plan (see *McCreight v. 146919 Canada Ltd.*, [1991] O.J. No. 136 (Q.L.) (Ont. H.C.), esp. at p. 12).

Having determined the proper interpretation of section 7.3 of the Plan, we turn our attention to the potential application of subsection 74(7)



of the *Act*, which involves consideration of the meaning of the term “ancillary benefit” as used in that subsection. This term is not defined in the *Act*, but subsection 40(1) of the *Act* states that a pension plan may provide certain kinds of “ancillary benefits,” which include, in paragraph 5:

Early retirement options and benefits in excess of those provided by section 41 (early retirement option).

The early retirement option under section 41 of the *Act* is available only to those members of a plan who are within ten years of normal retirement. “Ancillary benefits” is defined in the General Regulation under the *Act* (Ont. Reg. 909, as am.) as meaning the benefits referred to in subsection 40(1) of the *Act*, but this definition is simply for the purposes of the Regulation and not the *Act*.

We conclude that the special early retirement pension provided for in section 7.3 of the Plan is, in fact, an “ancillary benefit” in the sense of subsection 74(7) of the *Act*. It involves an early retirement option (if not also an early retirement benefit) that is in excess of the early retirement option provided for in section 41 of the *Act*. One of the accepted meanings of the phrase “in excess of” is “more than” (see *The Concise Oxford Dictionary*, 9th ed. (Oxford: Oxford University Press, 1995). In our view, a special early retirement pension under section 7.3 of the Plan is “more than” the early retirement option under section 41 of the *Act* because, unlike the latter option, it is not simply available to plan members who are within ten years of normal retirement.

We conclude that a member of the Plan who is affected by the Partial Wind-Up is entitled to a special early retirement pension, in accordance with subsection 74(1) of the *Act* as read with

section 7.3 of the Plan, provided that,

- the member's age plus years of continuous employment or membership in the Plan total at least fifty-five at the effective date of the Partial Wind-Up in accordance with the opening clause of subsection 74(1), and
- the member does not qualify for an early retirement pension under any other provisions of the Plan with the result that the member's circumstances are “special” in the sense of section 7.3 of the Plan.

The only other qualification for a special early retirement pension – that of the consent of BICC under section 7.3 of the Plan – is deemed to be satisfied, on the Partial Wind-Up, by subsection 74(7) of the *Act*.

Consequently, the proposal of the Superintendent, in her Notice of Proposal, to refuse to approve the Partial Wind-Up Report, for failure to take account of the special early retirement pensions provided for in section 7.3 of the Plan, was proper. We, therefore, direct the Superintendent to carry out the proposal.

DATED at Toronto this 16th day of November, 2000.

C. S. (Kit) Moore  
Chair of the Panel

William M. Forbes  
Member of the Panel

Colin H.H. McNairn  
Member of the Panel



**INDEX NO.:** FST Decision #16 (FST File No. P0068-1999)

**PLAN:** Consumers Packaging Inc. Pension Plan II,  
Registration 998682

**DATE OF DECISION:** December 8, 2000

**PUBLISHED:** Bulletin 10/1 and FSCO website

**IN THE MATTER** of the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended by the Financial  
Services Commission of Ontario *Act*, 1997, S.O.  
1997, c. 28 (the "*Act*");

**AND IN THE MATTER** of a Partial Wind-up  
Report submitted by Consumers Packaging Inc.  
To the Superintendent of Financial Services  
respecting the Consumers Packaging Inc.  
Pension Plan II, Registration Number 998682  
(the "Pension Plan");

**AND IN THE MATTER OF** a Hearing in accor-  
dance with subsection 89(8) of the *Act*;

**AND IN THE MATTER** of an Application for an  
Award of Costs, in connection with the Hearing  
Request, made by United Steelworkers of  
America, Local 203G;

**BETWEEN:** CONSUMERS PACKAGING INC.

("Consumers")

Applicant

– and –

UNITED STEELWORKERS OF  
AMERICA, LOCAL 203G

("Local 203")

Respondent

– and –

SUPERINTENDENT OF FINAN-  
CIAL SERVICES OF ONTARIO

(the "Superintendent")

Respondent

**BEFORE:**

Ms. Kathryn M. Bush, Vice-Chair of the

Tribunal and Chair of the Panel

Mr. C.S. (Kit) Moore Member of the Tribunal  
and of the Panel

Ms. Joyce Stephenson, Member of the Tribunal  
and of the Panel

**REPRESENTATIONS BY:**

For United Steelworkers of America,  
Local 203G

Mr. Michael Mazzuca

For the Superintendent

Ms. Deborah McPhail

For Consumers Packaging Inc.:

Ms. Mary Picard

**DATE OF REPRESENTATIONS:**

On or before August 8, 2000

**DECISION RELEASED:**

December 11, 2000

Toronto, Ontario

**REASONS FOR DECISION**

This decision is in response to an application to  
the Tribunal by the United Steelworkers of  
America, Local 203G for an award of their costs  
in this proceeding in the amount of \$9,000 or  
in the alternative in an amount to be assessed  
on a solicitor and client basis, against  
Consumers Packaging Inc.

The proceeding to which the application relates  
arose out of a Notice of Proposal by the  
Superintendent dated April 30, 1999 related to





the partial wind-up report filed by Consumers. Consumers filed a hearing request with the Tribunal in respect of the Notice of Proposal on May 14, 1999. A Pre-Hearing Conference was convened by the Tribunal on August 19, 1999. At that Pre-Hearing Conference Local 203 was given party status in these proceedings. At the Pre-Hearing Conference all parties were represented and agreed to the issues in the proceeding. A Settlement Conference was also agreed to at the Pre-Hearing Conference and eventually took place on January 24, 2000. In addition, on agreement of the parties the hearing dates were scheduled for March 7, 8, and 9, 2000. At the Settlement Conference no settlement was reached and deadlines were set for an additional disclosure motion. In addition, deadlines were set for expert witness reports. By letter dated March 1, 2000, six days before the initial hearing date, counsel for Consumers advised the Tribunal that Consumers was withdrawing its Request for a Hearing. By letter dated March 6, 2000, counsel for Local 203 wrote to the Registrar of the Tribunal advising that Local 203 was not prepared to abandon any claim for costs until it had an opportunity to review any revised partial wind-up report filed by Consumers. A revised wind-up report was filed with the Tribunal on May 19, 2000. On July 7, 2000 Local 203 indicated that it would seek costs in this matter. The Superintendent advised that she took no position with respect to the application for costs.

We have concluded an award of costs in favour of Local 203 is not justified in the circumstances of these proceedings.

Firstly, the "Financial Services Tribunal Practice Direction on Cost Awards" (the "Practice Direction") makes it clear that the Tribunal need not follow the civil court practice where

the usual rule is that the unsuccessful party pay the successful party's costs. Rather the Tribunal is more likely to make a cost award against the party "if it has engaged in conduct which is clearly unreasonable, frivolous, or vexatious. The Tribunal is less likely to make a cost award against a party that has been reasonable, co-operative and helpful to the Tribunal". In this matter, Consumers always appeared reasonable, co-operative and helpful to the Tribunal.

Secondly, in a matter which was settled before hearing, it is difficult to determine that the position of the party was frivolous, vexatious or manifestly unfounded as described in the Practice Direction. The fact that a matter may appear likely to be unsuccessful for a party may not by itself be sufficient under the Practice Direction to award costs against that party.

Thirdly, in order that parties are better able to assess their rights of having costs assessed against them, we believe a matter should fall clearly within the conduct described in the Practice Direction before costs are awarded. In the circumstances of this case, The Tribunal agrees that the change of position taken by Consumers created some delay in the proceedings, but the Tribunal is not convinced that this delay was unnecessary or unreasonable.

DATED this 8th day of December, 2000 at the City of Toronto, Province of Ontario.

Kathryn M. Bush  
Vice Chair of the Tribunal and  
Chair of the Panel

C.S. (Kit) Moore  
Member of the Panel

Joyce Stephenson  
Member of the Panel





INDEX NO.: FST Decision #17 (FST File No. P124-2000)

PLAN: Subsection 67(5) of the *Pension Benefits Act*

DATE OF DECISION: December 21, 2000

PUBLISHED: Bulletin 10/1 and FSCO website

IN THE MATTER OF the *Pension Benefits Act*,  
R.S.O. 1990, c.P.8, as amended (the “Act”);

AND IN THE MATTER OF a Notice of Proposal  
to Refuse to Consent by the Superintendent of  
Financial Services dated August 14, 2000, with  
respect to an Application for withdrawal of  
money from a life income fund, locked-in  
retirement account, or a locked-in retirement  
income fund (a “locked-in account”) based on  
financial hardship;

AND IN THE MATTER OF a Hearing under  
section 89(8) of the Act.

## REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent of Financial Services (the “Superintendent”) Notice of Proposal to Refuse to Consent dated August 14, 2000 that denied the Applicant access to funds associated with his accrued pension benefit. The Applicant had made his application for these funds pursuant to the recently amended provisions of the *Pension Benefits Act* (namely, subsection 67(5) of the *Pension Benefits Act*) to permit access to locked-in pension funds on the grounds of financial hardship.

2. The Superintendent's grounds for the denial were that:

(a) the funds were not of a type to which the Superintendent could grant access under the Legislation; and

(b) the debt owed by the Applicant was not secured against his principle residence and there was no indication that the Applicant faced eviction.

3. Subsection 67(5) of the *Pension Benefits Act* is clear that access or “unlocking” is only possible with respect to a “prescribed retirement savings arrangement of the type that is prescribed”.
4. Section 84 of Regulation 909 of the *Pension Benefits Act* prescribes the types of retirement savings arrangements for the purposes of subsection 67(5): a life income fund; a locked-in retirement account and a locked-in retirement income fund.
5. The Regulation defines each of the above arrangements as follows:

“Life Income Fund” means a RRIF that meets the requirements set out in Schedule 1;

“Locked-in Retirement Account” means an RRSP that meets the requirements set out in subsection 21(2);

“Locked-in Retirement Income Fund” means a RRIF that meets the requirements set out in Schedule 1;

“RRIF” means a registered retirement income fund established in accordance with the *Income Tax Act* (Canada);



“RRSP” means a registered retirement savings plan established in accordance with the *Income Tax Act* (Canada).

6. The Applicant in this case is an active member of a registered pension plan and he has sought to withdraw funds from this registered pension plan. Such access is not permitted by the *Pension Benefits Act* and Regulation. The application does not fall within subsection 67(5) of the *Pension Benefits Act*. It is therefore not necessary to consider the further ground for the Superintendent’s refusal.

### Order

7. The Superintendent’s Notice of Proposal to Refuse to Consent dated August 14, 2000 is affirmed and this application is dismissed.

DATED at Toronto this 21st day of  
December, 2000.

Martha Milczynski  
Chair  
Financial Services Tribunal



INDEX NO.: FST Decision #18 (FST File No. P126-2000)

PLAN: Subsection 67(5) of the *Pension Benefits Act*

DATE OF DECISION: January 9, 2001

PUBLISHED: Bulletin 10/1 and FSCO website

**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c.P.8, as amended (the “*Act*”);

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the “*Superintendent*”), dated September 15, 2000, with respect to an Application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a “locked-in account”) based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the *Act*;

## REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent’s Notice of Proposal to Refuse to Consent dated September 15, 2000 that denied the Applicant access to funds associated with his registered pension plan. The Applicant had applied to withdraw some of these funds, pursuant to subsection 67(5) of the *Act*, which reads as follows:

67.-(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent’s grounds for denial were that:

1. the plan from which a withdrawal was requested is a registered pension plan, which is not one of the prescribed types of retirement savings arrangements for which the Superintendent may consent to an unlocking of funds;
2. the low income circumstance of financial hardship prescribed by s. 87(1)7 of Regulation 909, R.R.O. 1990, as amended (the “*Regulation*”) is not satisfied; and
3. the amount the Applicant may withdraw would be a negative amount, based on the prescribed formula in s. 89(6) of the *Regulation*.

3. Subsection 67(5) of the *Act* is clear that commutation or surrender (that is, unlocking) of a locked-in account is possible only for “a prescribed retirement savings arrangement of a type that is prescribed”. For these purposes, section 84 of the *Regulation* prescribes only a life income fund, a locked-in retirement account and a locked-in retirement income fund, which are defined in the *Regulation* as follows:

“Life Income Fund” means a RRIF that meets the requirements set out in Schedule 1;

“Locked-in Retirement Account” means an RRSP that meets the requirements set out in subsection 21(2);



"Locked-in Retirement Income Fund" means a RRIF that meets the requirements set out in Schedule 2;

The Regulation also defines an RRIF as "a registered retirement income fund established in accordance with the *Income Tax Act* (Canada)", and an RRSP as "a registered retirement savings plan established in accordance with the *Income Tax Act* (Canada)."

4. The Applicant in this case has applied to withdraw funds from an account held under a registered pension plan. A registered pension plan is not one of the types of retirement savings arrangements prescribed in section 84 of the Regulation for purposes of subsection 67(5) of the *Act*. As a result, the application does not meet the requirements of subsection 67(5) of the *Act*, and we need not consider the additional grounds for the Superintendent's refusal.

## ORDER

**The Superintendent's Notice of Proposal to Refuse to Consent, dated September 15, 2000 is affirmed and this application is dismissed.**

DATED at Toronto this 9th day of January, 2001.

Mr. C.S. (Kit) Moore  
Member, Financial Services Tribunal







INDEX NO.: FST Decision #19 (FST File No. P132-2000)

PLAN: Subsection 67(5) of the *Pension Benefits Act*

DATE OF DECISION: January 22, 2001

PUBLISHED: Bulletin 10/1 and FSCO website

IN THE MATTER OF the *Pension Benefits Act*,  
R.S.O. 1990, c.P.8, as amended (the “Act”);

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the “Superintendent”), dated October 23, 2000, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a “locked-in account”) based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the *Act*;

## REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent’s Notice of Proposal to Refuse to Consent dated October 23, 2000 that denied the Applicant access to funds associated with his locked-in registered retirement savings plan. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the *Act*, which reads as follows:

67.-(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent’s grounds for denial were that:

- (a) The low income circumstance of financial hardship prescribed by s. 87(1)7 of Regulation 909, R.R.O. 1990, as amended (the “Regulation”) is not satisfied; and
- (b) The amount the Applicant may withdraw would be a negative amount, based on the prescribed formula in s. 89(6) of the Regulation.

- 3. Before this case was decided, a pre-hearing by telephone conference call was convened with the Applicant and counsel for the Superintendent to discuss certain preliminary matters. As a result, it was agreed that:
- 4. The Tribunal hearing should be by written submission only; and
- 5. The only issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the application.
- 6. This application considered by the Superintendent in reaching her decision included information provided by the Applicant in Part 2A – Withdrawal Based on Low Income. An application submitted on this basis is subject to the circumstances of financial hardship set out in paragraph 7 of subsection 87(1) of the Regulation as follows:

87.-(1) The following circumstances of financial hardship are prescribed for the purposes of subsection 67(5) of the *Act*:



7. The owner's expected total income from all sources before taxes for the 12-month period following the date of signing the application is 66 2/3 per cent or less of the Year's Maximum Pensionable Earnings ["YMPE"] for the year in which the application is signed.
5. This application was signed in the year 2000, for which the Canada Pension Plan's YMPE was \$37,600, in which case 66 2/3 per cent of the YMPE would be \$25,066.66. The Applicant has stated that his expected total income from all sources before taxes for the 12-month period following the date of signing the application is \$43,349.02, which exceeds \$25,066.66. In this case, the low income circumstances of paragraph 87(1)7 of the Regulation are not satisfied.
6. As a result, the application does not meet the requirements of subsection 67(5) of the *Act*, and we need not consider the additional grounds for the Superintendent's refusal:

## **ORDER**

**The Superintendent's Notice of Proposal to Refuse to Consent, dated October 23, 2000, is affirmed and this application is dismissed.**

DATED at Toronto this 22nd day of  
January, 2001

Mr. C.S. (Kit) Moore  
Member, Financial Services Tribunal





INDEX NO.: FST Decision #20 (FST File No. P0133-2000)

PLAN: Subsection 67(5) of the *Pension Benefits Act*

DATE OF DECISION: January 26, 2001

PUBLISHED: Bulletin 10/1 and FSCO website

IN THE MATTER OF the *Pension Benefits Act*,  
R.S.O. 1990, c.P.8, as amended (the "*Act*");

AND IN THE MATTER OF a Notice of Proposal  
to Refuse to Consent (a "*Notice*") by the  
Superintendent of Financial Services (the  
"*Superintendent*") with respect to an applica-  
tion for withdrawal of money from a life  
income fund, a locked-in retirement account or  
a locked-in retirement income fund (a "locked-  
in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under  
subsection 89(8) of the *Act*;

## REASONS

1. The Applicant in this matter made three suc-  
cessive applications to the Superintendent  
for access to funds associated with a locked-  
in account in her name. In each case, the  
application was based on low income, one of  
several criteria of financial hardship pre-  
scribed by subsection 87(1) of Ontario  
Regulation 909, as amended (the  
"*Regulation*"), adopted under the *Act*.
2. The first such application, which requested a  
withdrawal of \$5000 from the locked-in  
account, was dated June 27, 2000. The  
Superintendent allowed that application, in  
the full amount requested, by a Consent  
dated July 13, 2000. Although the Applicant  
subsequently characterized this application,  
in her Request for Hearing in this matter, as  
"based on property," the application  
included a completed Part 2A, which relates  
to withdrawal based on low income. The  
application did not include any of the other  
versions of Part 2, which relate to withdrawal  
based on other prescribed criteria of financial  
hardship.
3. The second application, which requested a  
withdrawal of an additional amount from  
the locked-in account, was dated August 10,  
2000. The Superintendent proposed to refuse  
that application, by a Notice dated  
November 6, 2000, on the basis that section  
89 of the Regulation precludes the making of  
more than one application for withdrawal  
from a locked-in account on the basis of low  
income during any 12-month period.
4. The third application, which requested the  
withdrawal of an amount from the locked-in  
account that was substantially the same as  
that requested in the second application, was  
dated September 5, 2000. The  
Superintendent proposed to refuse that appli-  
cation, by a Notice that was also dated  
November 6, 2000, on the same basis as she  
proposed to refuse the second application.
5. The Applicant submitted a Request for  
Hearing, dated November 25, 2000, to this  
Tribunal in accordance with the *Act*. The  
Notice that was attached to that Request was  
the Notice in respect of the second applica-  
tion. Therefore, the Request for Hearing  
should be treated as being in relation to the



Superintendent's proposed refusal of the second application.

6. The Hearing before the Tribunal in this matter was held by means of the exchange of documents.
7. Section 89 of the Regulation provides that the Superintendent's authority to consent to a withdrawal of funds from a locked-in account on applications based on low income is subject to the condition that only one such application may be made during each 12-month period, but an unsuccessful application is not to be counted as an application for the purposes of that limitation. In the present case, as the second application was based on low income and was made within 12 months of the first application, which was made successfully on the same basis, the Superintendent had no authority to approve the second application even if the low income criterion of financial hardship, which was found to be satisfied on the first application, continued to be met on the occasion of the second application, as may well have been the case. In other words, the Superintendent was not entitled to consider the merits of the second application. This Tribunal cannot consider those merits and direct the Superintendent to act in a manner that is inconsistent with the Regulation.
8. The Applicant could, of course, make a further application, without waiting for the expiry of the 12-month period from the first application, if such an application could be put on the basis of one of the criteria of financial hardship prescribed by the Regulation other than low income – for example, receipt by the Applicant or her spouse of a written demand in respect of a mortgage debt on her principal residence

where she could face eviction if the debt were to remain unpaid. The Superintendent would have the authority to consider any such application on its merits.

9. In the circumstances, we must affirm the Superintendent's Notice in respect of the second application. Our reasons for that conclusion would equally apply if the Notice in respect of the third application were at issue before this Tribunal, with the result that our conclusion would be the same in respect of that Notice.

## ORDER

The Superintendent is hereby directed to carry out the proposal contained in her Notice of Proposal to Refuse to Consent, dated November 6, 2000, directed to the Applicant and relating to an application dated August 10, 2000 for a withdrawal from a locked-in account of the Applicant.

DATED at Toronto, this 26th day of January, 2001.

Colin H. H. McNairn  
Vice Chair  
Financial Services Tribunal





INDEX NO.: FST Decision #21 (FST File No. P 137-2000)

PLAN: Subsection 67(5) of the *Pension Benefits Act*

DATE OF DECISION: January 29, 2001

PUBLISHED: Bulletin 10/1 and FSCO website

**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c.P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated November 27, 2000, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the *Act*;

## REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated November 27, 2000 that denied the Applicant access to funds associated with his locked-in registered retirement savings plan. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the *Act*, which reads as follows:

67.-(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that the requirements of subsection 88(2) of

Regulation 909, as amended, to the *Act* (the "Regulation") do not permit a withdrawal of any amount in this case.

3. Under subsection 88(2) of the Regulation an individual is entitled to withdraw an amount calculated using the formula  $A - (B - C) = D$ , where A is the amount the Applicant applied to withdraw, B is the market value of all the assets of the Applicant, and their spouse or same-sex partner, subject to certain prescribed exclusions, C is the total liabilities of the Applicant, and their spouse or same-sex partner, subject to certain prescribed exclusions, and D is the amount that the Applicant is entitled to withdraw.
4. In this case, the formula in subsection 88(2) of the Regulation results in no amount being eligible for withdrawal as the calculation would be:  $\$14,000 - (\$66,300 - 0) = 0$ . (The calculation cannot result in a negative amount.)
5. As a result, the application does not meet the requirements of subsection 67(5) of the *Act*, and therefore the Superintendent's refusal is affirmed.

## ORDER

The Superintendent's Notice of Proposal to Refuse to Consent, dated November 27, 2000, is affirmed and this application is dismissed.

DATED at Toronto this 29th day of January, 2001.

Ms. Kathryn M. Bush  
Vice-Chair, Financial Services Tribunal



**INDEX NO.:** FST Decision #22 (FST File No. P140-2001)

**PLAN:** Subsection 67(5) of the *Pension Benefits Act*

**DATE OF DECISION:** January 30, 2001

**PUBLISHED:** Bulletin 10/1 and FSCO website

**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c.P.8, as amended (the “*Act*”);

**AND IN THE MATTER OF** a Notice of Proposal  
to Refuse to Consent by the Superintendent of  
Financial Services (the “Superintendent”), dated  
December 10, 2000, with respect to an applica-  
tion for withdrawal of money from a life  
income fund, locked-in retirement account, or  
a locked-in retirement income fund (a “locked-  
in account”) based on financial hardship;

**AND IN THE MATTER OF** a Hearing under  
subsection 89(8) of the *Act*;

## REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent’s Notice of Proposal to Refuse to Consent dated December 10, 2000 that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the *Act*, which reads as follows:

67.-(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent’s ground for denial was that the maximum amount the Applicant may withdraw, determined in accordance with subsections 89(6) and 88(2) of the Regulation, would be less than the minimum \$500 withdrawal that may be authorized by the Superintendent, as specified under subsection 85(2)(a) of the Regulation.
3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the application.
4. An application of this nature is also subject to conditions and requirements prescribed in sections 83 through 89 of the Regulation. The following excerpts from those sections are particularly relevant to this application:

85.-(2)(a) The application shall request that the consent authorize the withdrawal of...the amount calculated under this Part, which shall not be less than \$500;

88.-(2) Subject to section 89, ...the owner is entitled to withdraw an amount calculated using the formula,  $A - (B - C) = D$  in which

“A” is the amount the owner applies to withdraw;

“B” is the market value of all assets of the owner and the spouse or same-sex partner except the following:

1. The owner’s principal residence and all personal property related to its use.



2. Motor vehicles.
3. Personal effects, including clothing and jewellery.
4. Tools of the trade that are essential to the employment of the owner or the spouse or same-sex partner.
5. Assets that are necessary to the operation of a business or farm which the owner or the spouse or same-sex partner operates and has an interest in, up to a maximum of \$50,000 for each person and for each business or farm. However, if the owner and the spouse or same-sex partner operate and have an interest in the same business or farm, the total amount for that business or farm shall not exceed \$50,000; "C" is the total of the liabilities of the owner and the spouse or same-sex partner, except liabilities secured against excluded assets listed under "B"; "(B - C)" cannot be less than 0;

"D" is the amount the owner is entitled to withdraw, net of any withholding tax and fee.

89.-(6) The amount the owner may apply to withdraw under section 88 is the amount by which "E" exceeds "F" where, "E" is 50 per cent of the Year's Maximum Pensionable Earnings [YMPE] for the year in which the application is signed; and "F" is 75 per cent of the owner's expected total income from all sources before taxes for the 12-month period following the date of signing the application.

5. This application was signed in the year 2000, for which the Canada Pension Plan's YMPE was \$37,600, in which case 50 per cent of the YMPE would be \$18,800. In Part 2A of the application, the Applicant has stated that

her expected total income from all sources before taxes for the 12-month period following the date of signing the application is \$24,000, in which case 75 per cent of this amount would be \$18,000. In this case, the amount the Applicant may apply to withdraw is \$18,800 less \$18,000, or \$800, determined in accordance with subsection 89(6) of the Regulation.

6. In Part 3 of the application, the Applicant stated that the total market value of assets to be included was \$400 and total liabilities to be included were \$0, resulting in a difference of \$400. As a result, the amount the Applicant is entitled to withdraw, subject to any other prescribed conditions in the Regulation, is \$400, determined in accordance with the formula contained in subsection 88(2) of the Regulation, as follows:

$$D = \$800 - (\$400 - \$0) = \$400.$$

7. The calculated amount of \$400 does not meet the minimum amount of withdrawal to which the Superintendent may consent, as prescribed by subsection 85(2)(a), which requires that "the amount calculated under this Part...shall not be less than \$500". Therefore, the application does not meet the requirements of subsection 67(5) of the Act.

## ORDER

**The Superintendent's Notice of Proposal to Refuse to Consent, dated December 10, 2000, is affirmed and this application is dismissed.**

DATED at Toronto this 30th day of January, 2001

Mr. C.S. (Kit) Moore  
Member,  
Financial Services Tribunal





**INDEX NO.:** FST Decision #23 (FST File No. P0100-2000)

**PLAN:** London Life Insurance Company Staff Pension Plan,  
Registration 0343368

**DATE OF DECISION:** February 7, 2001

**PUBLISHED:** Bulletin 10/1 and FSCO website

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**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an order under Section 69 of the *Act* respecting London Life Insurance Company Staff Pension Plan, Registration No. 0343368 (the "Plan");

**AND IN THE MATTER OF** a Hearing in Accordance with subsection 89(8) of the *Act*.

**BETWEEN:** LONDON LIFE INSURANCE COMPANY  
Applicant  
and -  
SUPERINTENDENT OF FINANCIAL SERVICES AND THE EXECUTIVE MEMBERS OF THE LONDON LIFE MEMBERS' COMMITTEE, ALEX MURPHY, DON MATHEWSON AND BARBARA MCGEE  
Respondents

**BEFORE:**

Mr. Colin H.H. McNairn, Vice Chair of the Tribunal and Chair of the Panel

Mr. Louis Erlichman, Member of the Tribunal and of the Panel

Mr. William M. Forbes, Member of the Tribunal and of the Panel

**APPEARANCES:**

For the Executive Members of the London Life Members' Committee:

Ms. Dona L. Campbell

For the Superintendent of Financial Services:

Ms. Deborah McPhail

Ms. Lesa MacDonald

For London Life Insurance Company:

Mr. Jeffrey W. Galway

Ms. Lai-King Hum

**HEARING DATES:**

December 11-15 and December 19-20, 2000

**REASONS FOR DECISION**

**The Background**

The Superintendent of Financial Services (the "Superintendent") issued a notice of proposal, dated February 17, 2000, to make an order (the "Notice of Proposal") against London Life Insurance Company ("London Life") in which she proposed to order that the London Life Company Staff Pension Plan, Registration No. 0343368 (the "Plan") be wound up in part. The wind up was directed in relation to those members and former members of the Plan who were employed by London Life and who ceased to be so employed, effective between January 1, 1996 and December 31, 1996 or the date the last Plan member ceased employment (whichever is later) as a result of:





- (i) The reorganization of the business of London Life; or
- (ii) The discontinuance of all or a significant portion of the business carried on by London Life at one or more specific locations.

In issuing the Notice of Proposal, the Superintendent relied on clauses 69(1)(d) and 69(1)(e) of the *Pension Benefits Act*, as amended (the “*Act*”). The relevant parts of subsection 69(1) of the *Act* are as follows:

- 69(1) The Superintendent by order may require the wind up of a pension plan in whole or in part if
- (d) a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer;
- (e) all or a significant portion of the business of the employer at a specific location is discontinued;

On March 6, 2000, London Life delivered to this Tribunal a written notice requesting a hearing in respect of the Notice of Proposal pursuant to subsection 89(6) of the *Act*. At a pre-hearing conference held on July 11, 2000, the executive members of the London Life Members’ Committee, Alex Murphy, Don Mathewson and Barbara McGee (the “Members Committee representatives”) were granted party status in this matter.

## The Issues and their Resolution

We address the issues presented by this case in the manner and the order in which they were framed by the parties at the pre-hearing conference.

**Issue (a)** Did a significant number of

members of the Plan cease to be employed by London Life as a result of a reorganization or discontinuance of all or part of London Life’s business at any time between January 1, 1996 and December 31, 1996, pursuant to clause 69(1)(d) of the *Act*?

**Issue (a.1)** Did those who voluntarily left employment with London Life between January 1, 1996 and December 31, 1996, through resignation, early retirement, or otherwise, cease to be employed by London Life within the meaning of clause 69(1)(d) of the *Act* as a result of a reorganization or discontinuance of all or part of London Life’s business?

On February 26, 1996, London Life issued a press release announcing plans “to restructure its Canadian operations to enhance the company’s competitiveness, increase growth and improve customer service.” The press release went on to state that “re-engineering initiatives, internal reorganization and outsourcing programs will result in expected staff reductions across Canada of approximately 400 over the course of a year.”

The anticipated staff reductions as a consequence of this restructuring were to occur in administration – at head office and in the regional offices. The restructuring did not involve the sales staff of London Life.

London Life conceded that the implementation of these plans constituted a “reorganization of the business” of the company, in the sense of clause 69(1)(d) of the *Act*, but contended that a “significant number” of members of the Plan did not cease to be employed by London Life



“as a result of” the reorganization, as contemplated by clause 69(1)(d) of the *Act*. The company agreed that, in the circumstances of this reorganization, it was appropriate to look to terminations of employment of Plan members that occurred during the period from January 1, 1996 to December 31, 1996 in order to determine whether a significant number of members ceased to be employed as a result of the reorganization. However, it maintained that terminations during the period that were involuntary – i.e. those that were company initiated – were the only terminations that were relevant to that determination. In other words, voluntary terminations - i.e. those that occurred through resignation, early retirement or otherwise – should not be included.

The other parties to the proceeding maintained that voluntary and involuntary terminations should be taken into account since; it could reasonably be expected that some members who terminated voluntarily were influenced, to a significant extent, by the lack of security in their tenure or the increase in their workload, brought about by the reorganization, with the result that it was questionable whether they really left on a voluntary basis, and it would be a futile exercise to try to determine the reasons why particular members in fact terminated their employment in order to assess the voluntariness of their departures.

London Life acknowledged for the purposes of this proceeding that, during the period from January 1, 1996 to December 31, 1996, there were 384 involuntary terminations of administrative employees who were members of the Plan that were attributable to the reorganization. It maintained that this was not a significant number in the context of the Plan, which had a total membership of 8908 at the

beginning of 1996. That membership can be broken down as follows:

- 5870 active members
- 2038 pensioners
- 825 deferred pensioners
- 175 terminations not settled  
(i.e. options under the Plan on  
termination not yet elected)

In a Bulletin issued in September of 1990 (vol. 1, issue 3, at p. 17), the former Pension Commission of Ontario (the “PCO”), indicated that:

The question of what is a “significant number” [in the sense of what is now clause 69(1)(d) of the *Act*] will take into consideration a total plan basis and, if appropriate, a specific geographic location or membership class. As a general rule, a 20% drop in membership ... will trigger further examination of the case by PCO staff.

(The statement of which this observation is a part was designated as PCO Policy No. W100-450, but that policy is now classified by the Financial Services Commission of Ontario (“FSCO”), the successor to the PCO in the latter’s administrative and policy roles, as an “inactive pension policy,” see the FSCO Website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca))

In a subsequent decision of the PCO, following a hearing under the *Act* relating to a proposal by the Superintendent of Pensions to order a partial wind up of a Stelco pension plan, the PCO rejected an argument that 20% was a threshold below which it could be expected that a partial wind up would not be ordered (see *Stelco Inc. v. Superintendent of Pensions*, PCO Bulletin (1993), vol. 4, issue 1, p. 40, at p. 45). The PCO was of the opinion that the use of the term “significant” implies a more general and flexible standard and the need to consider each case on its merits.” It concluded, in the case



before it, that “the termination of 700 members out of a total of 3996 during an 18-month period must be considered a significant number by virtually any standard.”

In dismissing an appeal from this decision, the Ontario Divisional Court affirmed the proposition that an absolute number of terminations, considered without regard to their proportional impact, could be sufficiently high so as to constitute a “significant number” in the sense of clause 69(1)(d) of the Act (see *Stelco Inc. v. Ontario (Superintendent of Pensions)* (1994), C.C.P.B. 108, at p. 110 (an appeal from this decision was dismissed by the Court of Appeal, see (1995), 9 C.C.P.B. 126)). The Divisional Court made the following comments about the meaning of the word “significant” in this statutory provision:

The company [Stelco] took the position that the word “significant” must always be given a meaning resulting from a comparison of the number in question with some other number. In this case, the company took the position that 700 or so employees who were terminated in this reorganization could not be regarded as significant without making some comparison of that number with the total number of employees of Stelco. In the factum of the Superintendent, the meaning given to “significant” is a “noticeably or measurably large amount.” That may well be the appropriate meaning for the word in the context of this dispute. The word does not lend itself to a precise meaning. We see nothing wrong in the statement by the Commission that the termination of 700 employees could not be regarded as other than a termination of a significant number of employees. The Commission was saying that, regardless of the size of the overall business

operation, 700 persons is a significant number of persons. We agree. (At p.110)

Therefore, in the present case, we are entitled to have regard to the absolute number of terminations of Plan members over the period from January 1, 1996 to December 31, 1996 in determining whether a “significant number” of such members ceased to be employed as a result of the reorganization of London Life. That number is, at least, 384, which London Life has acknowledged to be the number of Plan members who were involuntarily terminated as a result of the reorganization.

We are of the opinion that 384 is a “significant number” of members of the Plan ceasing to be employed, in the course of a year, as a result of the reorganization of the business of London Life. In light of this conclusion, we do not find it necessary to deal with the argument of the Members Committee representatives that the number 384 should be supplemented by the addition of some or all of those administrative employees of London Life who voluntarily terminated their employment during the relevant period – the year 1996 – for the purpose of determining whether a “significant number” of members of the Plan ceased to be employed as a result of the reorganization of London Life. Therefore, we do not comment on how issue (a.1), set out above, should be resolved.

While the foregoing reasoning is sufficient to dispose of issue (a), we have also considered the question of whether the number of involuntary terminations as a result of the reorganization is “significant” in relation to the membership of the Plan. In this case, the significance of the number 384 may be properly assessed by comparing that number to the total number of active members of the Plan who were administrative employees at the relevant time.





The limitation of the comparison to active members is appropriate since clause 69(1)(d) of the *Act* is triggered when a significant number of "members" of a pension plan "cease to be employed" by their employer (see also the definitions of the terms "member" and "former member" in section 1 of the *Act*). It is logical, therefore, to determine the significance of the number of members who ceased to be employed against the number of members who were employed at the time.

The limitation of the comparison to members who are administrative employees also makes sense as the purpose is to determine the significance of the number of members of the Plan who have ceased to be employed as the result of a reorganization that is limited to the administrative side of the business and the employees involved in that part of the business represent a substantial portion of the members of the Plan.

In the course of this proceeding, London Life disclosed information that suggested a range of possible numbers as representing the total size of its active administrative staff complement who were members of the Plan at or about the beginning of 1996. These numbers and the way in which they have been ascertained are as follows:

2572.5, arrived at by adding the number of regular and temporary head office staff (1896) and the number of regular and temporary regional office staff (686.5) at the beginning of 1996 as disclosed by a Human Resources Corporate Staffing Summary excerpted from a Management Information Systems Report for December, 1996 (2572.5 is a payroll number and does not necessarily reflect membership in the Plan, although it might be expected that the payroll number

would be higher than the Plan membership number, for example some of the 11 temporary employees who are included in the payroll number may not have qualified for membership in the Plan),

2860 (approximately), arrived at on the basis of the statement in London Life's report to its shareholders on the first quarter results for 1996 to the effect that "approximately 400 positions, representing 14% of total administrative staff in London Life's Canadian operations, will be eliminated as a result of" the 1996 reorganization, 2913, disclosed by the total of the active members column on a chart entitled "London Life MEMBERSHIP BY PROVINCE AS AT 1995/12/31," and

3001, recited in the Facts Part of London Life's written submissions for the hearing in this matter as the number of active administrative members of the Plan as at December 31, 1995.

If we take the number of Plan members who, it is agreed, ceased to be employed as a result of the reorganization, namely 384, as a percentage of this possible range of total active Plan members who were administrative staff at the relevant time, we come up with percentages ranging between 14.9 and 12.8. In our opinion, 384 is a "significant number" of employees ceasing to be employed in the course of a year as a result of a reorganization when that number represents a percentage, of the relevant base of Plan members, that comes anywhere within this range, i.e. even if it is as low as 12.8%. This proportional analysis reinforces our earlier conclusion based on the absolute number of terminations resulting from the reorganization that the number of terminations was "significant" in this case.





**Issue (b)** Was all or a significant portion of the business carried on by London Life at one or more specific locations discontinued at any time between January 1, 1996 and December 31, 1996, pursuant to clause 69(1)(e) of the *Act*?

The Members Committee representatives maintained that two events in 1996 constituted the discontinuance of all or a significant portion of the business carried on by London Life at various specific locations with the result that the Superintendent was entitled, under clause 69(1)(e) of the *Act*, to require the partial wind up of the Plan. Those events consisted of;

- the closure of five mortgage offices resulting in the termination of 26 administrative staff, and
- the amalgamation of 11 regional sales offices, resulting in the termination of an additional 19 administrative staff.

London Life conceded that the first event came within clause 69(1)(e) of the *Act*. However, it maintained that the second event did not, at least where two or more offices in a particular town or geographic region were consolidated. It argued that, in those circumstances, London Life's business was still carried on after the amalgamation at the specific location at which it was previously carried on, namely the particular town or region, so that there was no discontinuance of business in the relevant sense.

In light of our conclusion as to the proper resolution of issue (a), it is not necessary to address this argument. Both of the events referred to above were part of the larger reorganization that occurred in 1996 and were anticipated, in general terms, by the plans for the restructuring of London Life announced in the February 26, 1996 press release. The Plan members who

ceased to be employed as a result of these events were included by London Life in the 384 Plan members who, it was agreed, ceased their employment in 1996 as a result of the reorganization. We have concluded that, in the circumstances, 384 is a "significant number" of members of the Plan. Therefore, there is a clear basis for the Superintendent ordering a partial wind up of the Plan under clause 69(1)(d) of the *Act*, although the Superintendent, in fact, relied on clause 69(1)(e) of the *Act* as well in her Notice of Proposal. In our view, that reliance was unnecessary.

**Issue (c)** If the answer to (a), (a.1) or (b) is yes, should the Tribunal, under subsection 89(9) of the *Act*, direct the Superintendent to order a partial wind up of the Plan?

London Life argued, in its initial written submissions, that the Tribunal should exercise its discretion, under subsection 89(9) of the *Act*, to refrain from directing the Superintendent to order a partial wind up of the Plan even if there were grounds, under clause 69(1)(d) or clause 69(1)(e) of the *Act*, for ordering such a wind up. However, this argument was not pursued at the hearing. Having found that the pre-conditions for a partial wind up order under clause 69(1)(d) of the *Act* have been satisfied, we are prepared to direct the Superintendent to make such an order since we have not been offered any good reason for not doing so. A similar approach was taken by the PCO in *Imperial Oil Ltd. v. Ontario (Superintendent of Pensions)* (1996), 15 C.C.P.B. 31, at p. 43 (an appeal from this decision was dismissed by the Ontario Divisional Court, see (1997), 16 C.C.P.B. 93).

**Issue (d)** If the answer to (c) is yes, what are the appropriate commencement



and end dates for the partial wind up order concerning the Plan?

The partial wind up order that the Superintendent proposed to make in this matter was identified in her Notice of Proposal. The proposed order was to the effect that the Plan be wound up in relation to those members and former members of the Plan who ceased to be employed by London Life effective between January 1, 1996 and December 31, 1996 or the date the last Plan member ceased employment, whichever is later, as a result of the reorganization of the business of London Life or the discontinuance of that business as carried on at one or more specific locations. However, at the hearing before the Tribunal, the Superintendent supported the position of the Members Committee representatives as to the commencement and end dates for the partial wind up contemplated by the Notice of Proposal.

The Members Committee representatives maintained that the commencement date for the partial wind up should be January 1, 1995 and that the end date should be December 31, 1997 at the earliest, suggesting that the Tribunal should direct the Superintendent to continue investigating terminations after the latter date. In essence, the Members Committee representatives argued that London Life was engaged in a single initiative through the 1995 to 1997 period to improve its bottom line, by cost cutting or through an appropriate acquisition, the results of which could be properly characterized as an on-going reorganization through the period.

In 1994, the management of London Life began discussing the "reengineering" of the business processes of the company, including the question of how any such program should be presented to employees given that concerns

about job security were anticipated. In that same year, an organizational change management group was established "to give input and advice to the leaders of the areas impacted by reengineering on the human side of change." It seems clear that some of the cost savings to be achieved through reengineering were expected to occur through the elimination or consolidation of some administrative positions. We note that this would represent a fundamental change in corporate culture since employment in London Life's administration had generally been regarded as "employment for life," as two of the witnesses testified in this case. The reengineering of business processes was built into the corporate objectives and strategies in the 1995 Business Plan for London Life.

In the course of 1995, reengineering and other strategies resulted in the closure of two claims administration offices in Edmonton and Vancouver, with a loss of 30 positions held by Plan members, the amalgamation of regional sales offices with a loss of approximately 12 jobs and the closure of several mortgage offices with a loss of five to eight jobs. The company also terminated an additional 75 or so administrative staff, who were primarily mortgage office and head office employees, during the year, for a grand total of approximately 122 involuntary terminations in 1995, compared to an average of 13 in the previous five years. London Life agreed that each of the office closure initiatives (relating to claims offices and to mortgage offices) involved a discontinuance of business at a number of specific locations so that grounds existed for a partial wind up order, under clause 69(1)(e) of the *Act*, in respect of the affected Plan members. During the course of 1995, the management team of London Life began planning the restructuring



that was later to be announced in the press release of February 26, 1996.

If the events of 1995 were to constitute a reorganization separate from that in 1996, the number of involuntary terminations of Plan members that resulted from the 1995 reorganization was not likely "significant" so as to justify the invocation of clause 69(1)(d) of the *Act* in respect of that reorganization. But that would not dispose of the argument of the Members Committee representatives that the reorganization that occurred through 1996 should be taken to have started on January 1, 1995, which presupposes a single continuing reorganization. Of course, if we were to find that the events leading to terminations in 1995 were part of such a reorganization, we would have to re-visit the issue of whether, in those altered circumstances, a "significant number" of Plan members ceased to be employed as a result of the reorganization, taking account of the additional terminations in 1995 but bearing in mind that the total was spread over a longer period, i.e. two years rather than one year.

London Life portrayed the changes brought about by the reengineering that took place in 1995 as incremental and simply part of normal good management decisions and, in any event, as unconnected to the restructuring announced in the press release of February 26, 1996.

In its decision in the Imperial Oil case (referred to above), the PCO noted the importance of certainty in the manner of selecting the commencement and end dates of any reorganization, for the purposes of applying clause 69(1)(d) of the *Act*, and the consequent advantage of using a public announcement date as the commencement date. In particular, the PCO noted, in response to the suggestion that the commencement date of the proposed partial

wind up in that case be moved back from the announcement date to capture a period in which there was an increase from the usual number of involuntary terminations:

We do not accept that the commencement date should be moved back. Clause 69(1)(d) makes it clear that the terminations must "result" from the discontinuance or reorganization. It is hard to be satisfied that the terminations in the fall of 1991 resulted from the reorganization that had not yet been announced or undertaken. The steps involved in the reorganization had not yet taken place so even if the terminations were in anticipation of changes to the business, they could not be the result of the reorganization. Being related to a reorganization is not the same thing as resulting from a reorganization.

It was the announcement followed by the events described that constitutes the reorganization of the business and it is the terminations that occurred due to those events that are encompassed by the terms of clause 69(1)(d) of the *Act*.

In coming to our decision on this matter, we wish to note that there is a need in all parts of the pension community for certainty about commencement and end dates and how they are selected. The concept of a partial wind up which occurs over a period of several years is difficult for many in the pension industry to understand and accept, making it all the more important that there be some clarity about how the period will be determined. Using the public announcement date is an accepted way of determining a commencement date. If using the public announcement date as the starting point proves problematic, undoubtedly some other mechanism will be used. In this case, the facts are consonant with the view that





reorganization did not take place prior to the public announcement on February 4, 1992.

(At pp. 44-45 of (1996), 15 C.C.P.B. 31.)

In our view, neither the common denominator of cost savings as the rationale for terminations in 1995 and 1996 nor the fact that mortgage offices were closed and regional sales offices were amalgamated resulting in terminations in both those years is sufficient to link the initiatives over the two year period as part of a single reorganization. Indeed, we are not persuaded that there is any compelling reason for moving the commencement date of the reorganization of London Life back from the beginning of 1996, as proposed in the Notice of Proposal, which is ostensibly the most logical time for the commencement of the partial wind up as it was marked by the public announcement of what was clearly a major restructuring plan that was anticipated to result, and did in fact result, in the termination of close to 400 employees over a one year period. In fact, we would have selected the actual date of the announcement, February 26, 1996, as the commencement date but for the fact that London Life presented evidence that the reorganization actually started in January with the termination of five or six Plan members and, therefore, it agreed that, were there to be a partial wind up order against it as a result of the reorganization, January 1, 1996 would be the appropriate commencement date.

In 1995, London Life was in negotiations with The Prudential Insurance Company of America ("Prudential") for the purchase of its Canadian business. However, those negotiations broke down in the latter part of the year and only resumed about the time of the press release of February 26, 1996 that announced plans for the restructuring of London Life. Those plans made

no reference to a possible acquisition, although staff were advised, in a communication the same day, that Business Plan priorities would not change and, therefore, London Life would continue, among other things, to look to acquire another Canadian life insurer or block of business. In May of 1996, London Life announced that it had agreed to acquire substantially all the Canadian business of Prudential. The sale closed on July 31, 1996. As of December 31, 1996, approximately 930 former employees of Prudential who had been offered and accepted employment with London Life became members of the Plan, with membership retroactive to August 1, 1996. Some 275 of these new members were terminated by London Life in 1997 in what it claimed was part of the continuing process of integration of the London Life and Prudential operations following the acquisition.

There were 103 other involuntary terminations in 1997, of which 42 related to the closure of London Life's five remaining mortgage offices, apparently as the final step in the process of consolidating mortgage functions at head office. As in the case of the mortgage office closures in earlier years, London Life agreed that it had discontinued its mortgage business at a number of specific locations so that grounds existed for a partial wind up order, under clause 69(1)(e) of the *Act*, in respect of the affected Plan members.

Once again, a sufficient link was not established between the restructuring plans of 1996 and their implementation, on the one hand, and events outside that year, on the other hand, so as to justify extension of the period of the reorganization beyond the year 1996. We make no comment on the question of whether there might have been a separate reorganization,





involving the integration of the Prudential business following the acquisition, that resulted in the cessation of employment of a "significant number" of Plan members since the communications between London Life and PCO or FSCO staff preceding the issue of the Notice of Proposal did not address that question. It was not, therefore, a proper subject for the hearing on this particular Notice of Proposal.

In September of 1997, Great West Life made a successful bid to acquire the shares of London Insurance Group, the parent company of London Life. No employees of Great West Life became members of the Plan. In 1998 and 1999, a number of administrative Plan members lost their jobs at London Life, apparently as a result of the integration of London Life's operations with those of Great West Life. London Life has agreed with the Superintendent's staff to proceed voluntarily with a partial wind up of the Plan with respect to terminations that resulted from this integration. A sufficient link between those terminations or any other terminations in 1998 and 1999 was not made to the events of 1996 so as to justify treating them as a result of the reorganization that was announced on February 26, 1996.

We conclude, therefore, that the appropriate commencement and end dates for the partial wind up order concerning the Plan that was the subject of the hearing before us are January 1, 1996 and December 31, 1996, respectively.

**Issue (e)** Did London Life have a legitimate expectation that the Superintendent would not issue a notice of proposal to make a partial wind up order under section 69 of the Act given the December 5, 1996 letter from the Superintendent to London Life?

**Issue (f)** Given the December 5, 1996 letter from the Superintendent to London Life, is the Superintendent stopped from now ordering a partial wind up of the Plan if London Life relied upon the aforementioned letter to its detriment?

The December 5, 1996 letter from the Superintendent to London Life was a letter, signed by a pension officer at the PCO, to the effect that, after a careful review of the information provided by London Life relative to the termination of a number of employees over the past year or more, the Superintendent of Pensions had concluded that there were not sufficient grounds to order a partial wind up of the Plan and did not intend to make such an order. This letter was one of a series of letters exchanged between London Life and the PCO, or its successor FSCO, relating to the termination of employees by London Life and the possible consequences of those terminations under the Act.

London Life claimed that, in reliance on the representations in this letter, it had not taken steps to preserve all of the documentation relating to terminations that had occurred during the period that the Members Committee representatives later alleged was covered by London Life's reorganization. It then urged this Tribunal to decline to draw any negative inferences from London Life's inability to state with certainty any of the facts that might be relevant to the determination of this case because of the lack of relevant documentation, linking this position with the doctrine of legitimate expectations and the doctrine of estoppel. We do not have to decide whether we are limited in this way, in our assessment of the facts, as we have not drawn any inferences against



London Life because of its inability to state any relevant facts with certainty or to produce any particular supporting documentation.

### **Disposition**

In light of our conclusions as to the proper resolution of the various issues raised by this case, we direct the Superintendent to carry out the proposal contained in the Notice of Proposal, subject to the order contemplated by that proposal being modified so that it directs that "the London Life Insurance Company Pension Plan, Registration Number 0343368 (the "Plan") be wound up in part in relation to those members and former members of the Plan who were employed by the London Life Insurance Company (the "Employer") and who ceased to be employed by the Employer effective between January 1, 1996 and December 31, 1996 as a result of the reorganization of the business of the Employer."

We make no order as to the costs of this proceeding but the panel will entertain written representations on that matter from any of the parties who wish to make them.

DATED at Toronto, this 7th day of February, 2001.

Colin H. H. McNairn, Vice Chair of the Tribunal and of the Panel

Louis Erlichman, Member of the Tribunal and Chair of the Panel

William M. Forbes, Member of the Tribunal and of the Panel



**INDEX NO.:** FST Decision #24 (FST File No. P0095-2000)

**PLAN:** Retirement Plan for Employees of Dustbane Enterprises Limited,  
Registration 229419

**DATE OF DECISION:** February 15, 2001

**PUBLISHED:** Bulletin 10/1 and FSCO website

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**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c.P.8, as amended by the Financial  
Services Commission of Ontario *Act*, 1997, S.O.  
1997, c.28 (the "*Act*");

**AND IN THE MATTER OF** a proposal by the  
Superintendent of Financial Services to Make  
an Order under section 87 of the *Act* respecting  
the Retirement Plan for Employees of Dustbane  
Enterprises Limited, Registration Number  
229419 (the "*Plan*");

**AND IN THE MATTER OF** a Hearing in  
accordance with subsection 89(8) of the *Act*;

**BETWEEN:** DUSTBANE ENTERPRISES LIMITED

Applicant

- and -

SUPERINTENDENT OF FINANCIAL  
SERVICES, 548264 ONTARIO INC.,  
and 818787 ONTARIO LIMITED  
Respondents

**BEFORE:**

Kathryn M. Bush  
Vice Chair of the Tribunal and  
Chair of the Panel  
Louis Erlichman  
Member of the Tribunal and of the Panel  
David Wires  
Member of the Tribunal and of the Panel

**APPEARANCES:**

Andrew K. Lokan and Karen Shaver  
For the Applicant

Deborah McPhail  
For the Respondent Superintendent  
Linda Galessiere  
For the Respondents  
548264 Ontario Inc. and 818787 Ontario  
Limited

**HEARING DATES:**

October 3, 4, 5 and 16, 2000

**REASONS FOR MAJORITY DECISION**

**A. THE BACKGROUND**

The Dustbane Pension Plan (the "*Plan*") was originally registered with the Pension Commission of Ontario on June 1, 1967. Prior to September 1, 1984, the Plan was an annuity purchase plan funded through a Group Deferred Annuity Contract with Standard Life Assurance Company of Canada. Effective June 1, 1984, the Plan became a defined benefit plan and was funded through a Trust Agreement with Mutual Life (now Clarica).

Dustbane Enterprises Limited ("*Dustbane*") is the Administrator of the Plan. The Plan is for the employees of Dustbane, its subsidiaries, associated or affiliated companies and distributors. The Respondents 548264 Ontario Inc. and 818787 Ontario Limited were at June 1, 1990 distributors under the Plan.

Subsequent to discussions about changing the contractual relationship between Dustbane and its distributors, the Directors of Dustbane





passed a resolution on January 30, 1990 to amend the Plan effective June 1, 1990 to provide that distributors would no longer be part of the Plan and that assets equal to the transfer value would be transferred "to an RRSP, lock-in RRSP, or paid in cash to each employee depending on what they are entitled." The transfer value relative to the distributors was later determined to be \$303,700.

At June 1, 1990, the companies in the distributor group (the "Distributors") were J. W. Evans Lessee-Dealer Ltd., Masters Sanitation Ltd., S.M. Bouchard (1978) Inc., D.R. Huntington Sales Ltd., Robinson Sanitation, J.J. Edstrom (1974) Ltd., 818787 Ontario Limited, Mutual Sanitation & Supplies Ltd. and Columbia Distributors Ltd.

At that time none of the Distributors was an affiliate of Dustbane within the meaning of the term "affiliate" in the *Ontario Business Corporations Act*, R.S.O. 1990, c.B.16.

On February 27, 1991 the Plan Actuary filed the Partial Wind-Up Report relating to the June 1, 1990 wind-up. A revised Wind-Up Report was filed on September 23, 1991 which showed a deficit (apparently for the entire plan) of \$33,154. That report indicated that it was "decided to ignore the small going concern deficit because that deficit will be funded as outlined in actuarial valuation as of September 30, 1989." An Actuarial Valuation Report as at June 30, 1995 then showed that the wind-up related to the Distributors was now in a \$212,000 deficit. That Report noted 'Benefits were valued at 12% interest. Between June 1, 1990 and June 30, 1995 those assets earned the same rate of return as the whole pension fund while the corresponding liabilities grew at a rate of 12%.'

The increase in the deficit arose from the difference between actual Plan earnings and the 12% growth in the liabilities, as well as additional actuarial fees incurred.

In August 1997, Dustbane's Actuary apportioned the deficit for the partially wound-up portion of the Plan amongst the Distributors, notified each Distributor of the amount of its proportionate share of the deficit, and directed each Distributor to pay its share directly to Mutual Life, now Clarica. To date, only one Distributor, Mutual Sanitation, has paid its share of the deficit. One Distributor has become bankrupt since the partial wind up.

The Plan Actuarial Valuation as of June 30, 1998 for the Plan shows that the deficit in the partially wound-up portion of the Plan had increased to \$261,400 as of that date.

On December 21, 1999, the Superintendent made a Notice of Proposal to Make an Order requiring Dustbane to pay an amount equal to the total of all payments due or accrued and not paid as at June 1, 1990 plus interest to the date of payment.

On February 26, 2000, Dustbane brought an application to request a hearing before the Tribunal to direct the Superintendent to refrain from making or carrying out the proposed Order.

At the first pre-hearing conference convened by the Tribunal it was agreed that notice of the hearing would be provided to both the Distributors and the affected former members. As a result of that notice 548264 Ontario Inc. and 818787 Ontario Limited requested to be added as parties to this proceeding, along with Dustbane and the Superintendent. That request was granted upon the consent of the other parties.





## B. THE ISSUES

At the Pre-Hearing Conferences the parties agreed that the issues to be determined in this proceeding were as follows:

- (a) As at Partial Wind-Up date, was the Plan a multi-employer plan within the meaning of s.1 of the *Act*?
- (b) If the answer to issue (a) is "yes", who is required to fund the deficit in the Plan's fund?
- (c) If the answer to issue (a) is "no", who is required to fund the deficit in the Plan's fund?
- (d) Does the Tribunal have the jurisdiction to take into account any delay on the part of the regulator in its determination of the above issues?
- (e) If the answer to issue (d) is "yes", are Dustbane or any of the Distributors liable for the deficit in light of the delay by the regulator in the circumstances of this case?

## C. ANALYSIS

- (a) As at the partial wind-up date, was the Plan a multi-employer plan within the meaning of section 1 of the *Act*?

The *Act* in section 1 defines an "employer" and a "multi-employer pension plan" as follows:

"employer" in relation to a member or a former member of a pension plan, means the person or persons from whom or the organization from which the member or former member receives or received remuneration to which the pension plan is related, and "employed" and "employment" have a corresponding meaning;

"multi-employer pension plan" means a pension plan established and maintained for

employees of two or more employers who contribute or on whose behalf contributions are made to a pension fund by reason of agreement, statute or municipal by-law to provide pension benefit that is determined by service with one or more of the employers, but does not include a pension plan where all the employers are affiliates within the meaning of the *Business Corporations Act*;

Two issues were raised in this proceeding relating to this matter. The first was whether the Distributors were in fact employers within the meaning of the *Act* or whether in fact Dustbane was properly characterized as the "employer" of the Distributor's workers for purposes of the *Act*. The second was whether even if the Distributors were employers for the purposes of the *Act* whether they agreed to contribute to the Plan.

Considerable evidence was presented on the relationship between Dustbane and the Distributors:

- all the Distributors were separate corporate entities from Dustbane;
- there was no common ownership between Dustbane and the Distributors;
- the Distributors were lessees of their business premises, which included office and warehouse facilities;
- the Distributors appointed their own board members and Dustbane had no role in the Distributors' boards;
- the Distributors approved their own By-laws/Articles of Incorporation and Dustbane had no role in this;
- the assets of one Distributor were not available to satisfy the debts of another;
- Dustbane prepared cheques for Distributors. In the 1980's, Dustbane began using a direct

deposit system for payroll, in which funds were transmitted directly from Dustbane to the Distributors' employees' bank accounts;

- The Dustbane logo was used on the cheques, invoices, and other stationery used by the Distributors, in addition to the Distributor's name, and Dustbane's signs were prominently displayed on Distributors' premises.

- Dustbane did not hire and fire, discipline, or set rates of pay for the Distributors' employees, although commission rates for sales staff were the same at Dustbane and each of the Distributors;

- Dustbane had no signing authority on the Bank accounts of the Distributors;
- if the Distributor required a bank loan (and at some point, all of the Distributors required financing), Dustbane guaranteed the loan; and

- Dustbane did not control the Distributors' access to funds. However, where Dustbane had guaranteed the Distributor's bank loan, Dustbane reviewed any withdrawals.

The 1984 restatement of the Plan provides as follows:

s.1.8 "Employer" shall mean Dustbane Enterprises Limited, its subsidiaries or affiliated companies and its distributors who have elected in writing to participate in the Plan.

No written elections were apparently ever made. Dustbane's witness testified that when the Plan was amended and restated in 1984 this was simply a continuation of the existing Plan and therefore that despite the Plan wording written elections were not necessary.

The standard clause in the Distributor agreements covering Dustbane's provision of services was as follows ("Buyer" is the Distributor):

## 8. Services

Buyer agrees to employ Dustbane exclusively to maintain its books and records of account and Dustbane agrees to provide, in addition to this service, advice by specialists in all areas of operation, advertising and merchandising program and the fulfillment of Buyer's reasonable request for assistance, all services to be provided at a fee of 5% on Buyer's sales volume.

Buyer shall have the irrevocable right at all reasonable times to complete access to and audit said Books and Records of Accounts by an independent auditor of its choice at its own expense. Dustbane agrees to supply the services described in this paragraph with respect of any matter only where, in the opinion of the advisors of Dustbane, the interests of Dustbane and of the Buyer do not conflict.

Dustbane maintained that the 5% fee in the "services" section of the Distributor Agreements was meant to cover the cost of administration of the Plan by Dustbane but not contributions to the Plan.

The Act has many references to multi-employer pension plans (MEPPs) in addition to the definition in Section 1.

Section 8(1)(e) provides that MEPPs "established pursuant to a collective agreement or a trust agreement" must be governed by a board of trustees with at least 50% member representation.

Section 10(2) requires that "the documents that create and support a multi-employer pension plan pursuant to a collective agreement or a trust agreement shall set out the powers and duties of the board of trustees that is the administrator of the multi-employer pension plan."

Section 14(2) exempts MEPPs "established



pursuant to a collective agreement or a trust agreement" from the general prohibition on reducing earned benefits.

Section 61 requires that an employer who is required to make contributions to a MEPP "shall transmit to the administrator of the plan a copy of the agreement that requires the employer to make the contributions or a written statement that sets out the contributions the employer is required to make and any other obligations of the employer under the pension plan."

Section 85 exempts "Pension benefits provided under a multi-employer pension plan" from the guarantees of the Pension Benefits Guaranty Fund (PBGF).

Section 40(t) of Regulation 909 requires that the annual statement for members of MEPPs include a statement that benefits are not guaranteed by the PBGF and are subject to reduction if liabilities exceed assets at plan wind up. This is not an exhaustive catalogue of references to multi-employer pension plans in the *Act*, nor are the references entirely consistent. In some cases, the reference is to a MEPP "established pursuant to collective agreement or trust agreement", while in others, notably Sections 61 and 85 and Section 40 of the Regulation, the reference is simply to a multi-employer pension plan.

One of the key aims of the *Act* is the protection of the benefits earned by plan members and beneficiaries. The *Act* lays down stringent wind up obligations for employers, and establishes a Guarantee Fund to protect members in the event of employer insolvency at wind up.

The provisions of the *Act*, read together, create a class of multi-employer plans, which are qualitatively different than plans sponsored by a single employer. The *Act* accepts the limitation of employer liabilities within MEPPs, and

exempts MEPPs from Guarantee Fund coverage, but insists on a clear statement of employer obligations, for the protection of plan members and beneficiaries, and an arguably higher level of trust obligations.

Dustbane has argued for the lowest possible standard in assessing whether a plan qualifies as a multi-employer plan. Referring only to Section 1 of the *Act*, Dustbane argues that participation in the plan by members employed by corporate entities with some level of independence, and indirect evidence of funds flowing from these entities to the pension fund, are sufficient to render a pension plan a MEPP.

In this case, Dustbane made no effort, prior to the partial wind up, to constitute their pension plan as a MEPP. There were no written agreements concerning pension plan participation with any of the entities which Dustbane now purports to have been separate employers within the MEPP. In none of the Dustbane's reporting to the Pension Commission, from their initial application for registration in 1964 until the partial wind up application, was the plan ever referred to as a MEPP, even when the existence of a MEPP was a specific question on the report. In the three years prior to the partial wind up, the Dustbane pension plan made contributions to PBGF, which would have been unnecessary contributions for a MEPP.

The annual statements sent by Dustbane to pension plan members did not contain the prescribed (by Section 40(t) of the Regulations) warning that, since the plan was a MEPP, there was no PBGF protection, and that benefits could be reduced on wind up.

These were not minor technical breaches of the legislation. It goes directly counter to the protection of plan members and beneficiaries, which is at the core of the *Act*, to allow an





employer to claim, after having failed to meet the clear requirements of the legislation, that the plan is a multi-employer plan, and thereby to evade liabilities on partial wind up.

The Dustbane pension plan clearly failed to meet the requirements of a multi-employer plan under the *Act*.

Even if it were concluded that the threshold for a MEPP is at the low level proposed by Dustbane, would their argument that each of the Distributors is a separate employer be successful?

On the question of what constitutes an employer, we cannot simply look at whether the Distributors would be considered as separate employers for the purposes of income tax, labour relations, or other legislation. There are a variety of precedents in a variety of legal contexts which require us to consider the specific facts of each case in relation to the legislation at hand, in deciding who is the actual employer.

There is no doubt that each of the Dustbane Distributors was separately incorporated, and named as the employer on employee T-4 forms. The relationship between Dustbane and its Distributors was a tangled one. Each Distributor was set up to act as Dustbane's sole distributor in a particular geographic area. Dustbane strictly controlled the actions of the Distributors through a distributor agreement. For each of the Distributors, Dustbane laid down sales quotas, limited sales of non-Dustbane products, set wholesale and retail prices, acted as lessor for the Distributors' offices, guaranteed bank loans to Distributors and generally oversaw all of the financial and other operations of the distributors (for a management fee of 5% of gross sales). The distributor agreements make no mention of the pension plan, or of any employee benefit plan.

Dustbane argued that, despite the lack of any written agreement by any of the Distributors, a decades-long history of plan contributions was clear evidence of a tacit agreement by the Distributors to participate in the pension plan as employers. This argument conflicts somewhat with the Dustbane proposition that each of the Distributors was an independent corporate entity. All of the Distributor Corporations do not have an unbroken history to 1959, and in at least one case, the Distributor Corporation was formed less than a year before the partial wind up.

In 1984, the Dustbane Board of Directors unilaterally converted the Dustbane pension plan from an insured basis to a trustee defined benefit basis, a major change, which increased the possibility of the partial wind up deficit. The decision to convert the plan was made without participation of, or consent by, any Distributor.

The 1984 plan text explicitly requires a written agreement to participate in the pension plan by each employer. It also names the employer as administrator. No written participation agreement was ever obtained from any Distributor, even those who came into being after the 1984 plan changeover. The decision to partially wind up the plan, which Section 68(1) of the *Act* gives to the Administrator of a multi-employer plan, was made unilaterally by Dustbane. The use of actuarial services for the partial wind up, which accounts for a significant portion of partial wind up deficit, was directed solely by Dustbane.

Prior to the partial wind up, Dustbane did not inform the Distributors that they were Employers (and also, according to plan text, Administrators), and might have particular legal and financial obligations as Employers





and Administrators. Dustbane provided the Distributors with no plan documents, other than annual statements sent to the Distributors personally as plan members (which did not identify the plan as a MEPP). Evidence was presented that members' plan statements were distributed via Distributors. Distributors never took any role as plan administrators, never formally ceded their responsibilities as administrators, or were even consulted on matters like the use of plan surpluses, which would normally be a matter for discussion by plan sponsors and administrators. When, subsequent to the wind up, the Distributors were told that they could bear some extra liability as the result of the wind up, they requested, first informally, and then formally, basic plan documents, including the plan text. Dustbane refused to provide this information.

Dustbane has argued that the lack of written participation agreements signed by Distributors was a minor clerical oversight. The sections of the *Act* quoted above show the importance, in the legislation, of clear documentation of Employer obligations in a multi-employer pension plan. Dustbane, acting as sole Administrator of the plan, in sole possession of plan documents, would have been aware, as the Distributors would not, that the plan required Distributors, if they were separate Employers for purposes of the plan, to sign written participation agreements. This was never done.

Dustbane has argued that the fact that "employer contributions" were made by the Distributors is clear proof of the Distributors' tacit agreement to participate in the Dustbane pension plan as employers. Leaving aside the requirements of both the *Act* and the Dustbane plan text for explicit written documentation,

this assertion is questionable.

On the basis of the evidence presented, it would appear that the cheques prepared by Dustbane for Distributor signature covered overall payroll costs, with no breakdown of payments for the benefits package, let alone payments for employer pension contributions. It is difficult to read employer agreement to participate into payments of which the Distributors were largely unaware.

It is clear that Dustbane acted, until the possibility arose of transferring the responsibility for partial wind up liabilities to the Distributors, as if it were the sole employer and sole administrator of the Dustbane Pension Plan.

If the Distributors were, in fact, separate employers under the Dustbane Plan, Dustbane seriously breached its fiduciary duties as Administrator, under Section 22 of the *Act*, to the Plan members, and to the Distributors as Employers and co-Administrators, in failing to obtain written participation agreements and consistently failing to act to ensure that employer obligations were broadly understood and would be met.

We therefore conclude that, for purposes of the *Act*, this plan is not a multi-employer plan, and that Dustbane is the employer.

(c) If the answer to issue (a) is "no", who is required to fund the deficit in the Plan's fund?

As we have concluded that this is not a multi-employer plan, the obligation to fund the deficit falls on the Employer, Dustbane.

(d) Does the Tribunal have a jurisdiction to take into account any delay on the part of the regulator in its determination of the above issues?

There is no question that delay occurred in



this matter. A June 1, 1990 partial wind-up resulted in a Notice of Proposal over nine years later.

In addition, it appears that a total of 28 employees or officers of PCO/FSCO worked on the Dustbane application between its filing and Notice of Proposal, including 11 Pension Officers, 4 Analysts, Acting Officers or Assistants, 4 Plan Examiners, 2 Actuaries, 5 Consultants, and 3 Directors.

There is, however, a question as to the cause of that delay.

The following is a chronology of the partial wind-up application which is clearly illustrative of delay.

March 29, 1990 – Dustbane advises Pension Commission of Ontario (“PCO”) of its intention to partially wind up Plan;

April 5, 1990 – PCO Officer acknowledges letter and requests additional information;

April 11, 1990 – Dustbane provides PCO with copy of Notice to Distributors dated March 24, 1990 regarding the partial wind-up;

May 7, 1990 – Dustbane provides Distributors with estimates of employer obligations as a result of partial wind up of plan – states that exact options and amounts will only be available “after June 1, 1990 once contribution data to June 1st has been received from your offices”;

February 27, 1991 – Dustbane files first Partial Wind-Up report;

July 11, 1991 – Dustbane requests review and approval of Modern Building Transfer by July 31, 1991;

August 8, 1991– PCO requests that Dustbane complete Checklist and questions the Dustbane actuary’s interest rate assumptions;

August 15, 1991 – Dustbane certifies that all

contributions have been made to pension fund to date of partial wind-up;

September 20, 1991 – Dustbane requests approval to pay benefits to Huntington employee – G. Courtney;

September 23, 1991 – Dustbane files Revised Wind Up Report including Superintendent’s Checklist and the Dustbane actuary explains basis for attributing interest rates;

October 22, 1991 – Superintendent authorizes payment of benefits to G. Courtney on condition that transfer ratio maintained at “1”;

November 1, 1991 – PCO staff advises actuary of deficiencies in Superintendent’s checklist and that Partial Wind-Up Report cannot be approved until Modern Building Transfer asset approved;

November 6, 1991 – Dustbane actuary advises administrator that Huntington must pay \$173.03 with respect to G. Courtney to maintain transfer ratio of “1”;

December 13, 1991 – Dustbane submits Revised Superintendent’s Checklist addressing all deficiencies in PCO letter of 1/11/91;

March 20, 1992 – Letter from PCO staff regarding further deficiencies and requests information about revised Partial Wind-Up report filed on September 23/91;

October 2, 1992 – Dustbane provides expanded solvency valuation and responds to all issues raised in letter of 03/20/92;

May 3, 1993 – Dustbane files Final Asset Transfer report for Modern Building Cleaning Inc. sale;

August 30, 1993 – Superintendent approves Asset Transfer on condition that Dustbane files certified Notice to Plan Members of asset transfer;



- November 8, 1993 – Dustbane files Final Partial Wind Up Report including revised interest rates;
- May 31, 1994 – Dustbane files certified copy of Notice to employees regarding Modern Building Asset Transfer and Superintendent gives final approval of asset transfer;
- September 7, 1994 – Dustbane actuary writes letter to PCO regarding summary of events, breakdown of member benefits using revised interest rates and requests direction and approval to file valuations;
- January 5, 1995 – Dustbane actuary contacts PCO requesting response to letter of 09/07/94;
- January 13, 1995 – Letter from PCO asking Dustbane to clarify partial wind-up report information and requests other information;
- April 30, 1996 – Dustbane resubmits all documents requested, responds to all issues raised and indicates dates that documents addressing issues were originally filed with PCO;
- July 22, 1996 – Letter from PCO requesting clarification about information included in all partial wind up reports;
- December 19, 1996 – Telephone call between PCO and Dustbane actuary regarding triennial valuation as at June 30, 1995;
- January 30, 1997 – Letter from PCO to Dustbane actuary indicating that the partial wind up will be forwarded to Superintendent for decision by February 6, 1997;
- January 31, 1997 – Dustbane files June 30, 1995 actuarial valuation;
- February 3, 1997 – Dustbane responds to PCO letter of 7/22/96 by referring PCO to previous partial wind-up reports and submissions;
- February 28, 1997 – PCO sends enforcement letter regarding deficit at June 1, 1990;
- March 4, 1997 – Dustbane responds with letter from Mutual Life confirming that special payment – \$78,000 made on January 22, 1997;
- August 11, 1997 – Dustbane actuary allocates deficit among distributors and advises each to make payments directly to Mutual Life;
- March 18, 1998 – Dustbane advises former member that benefits cannot be paid until deficit paid;
- September 8, 1998 – PCO advises Dustbane that Superintendent gave blanket approval to pay benefits;
- October 26, 1998 – Dustbane advises the Financial Services Commission of Ontario (“FSCO”) that it is not in position to finalize member benefits because of unfunded liability and member’s employer is bankrupt;
- November 27, 1998 – s.98 letter to Dustbane demanding copy of written agreement to participate in plan and up-to-date list of distributors;
- December 21, 1998 – Dustbane responds to FSCO, provides copies of distribution agreement and explains service provision, how distributors and employers contribute to plan and the names and addresses of distributors as requested;
- March 2, 1999 – s.98 letter to Dustbane;
- March 8, 1999 – Response from Dustbane;
- March 19, 1999 – Dustbane files actuarial valuation as at June 30, 1998;





- June 28, 1999 – Distributor S.M. Bouchard provides T4 slips 1989-1990 showing S.M. Bouchard Inc. as employer;
- June 29, 1999 – s.98 letter states that the information provided does not adequately address issue of written or oral agreement;
- June 29, 1999 – s.98 letter to distributors regarding the deficit in plan at June 1, 1990;
- August 4, 1999 – FSCO requests that Dustbane actuary provide breakdown of deficit and professional fees since partial wind-up;
- August 12, 1999 – Dustbane actuary responds to FSCO and provides a reconciliation of asset changes from 1990 – 1995 and from 1995 – 1998;
- August 30, 1999 – Distributor J.W. Evans provides copy of distribution agreement;
- September 14, 1999 – Dustbane actuary provides further response to FSCO request regarding a reconciliation of professional fees for 1990-1998;
- October 18, 1999 – Letter from solicitor for J.W. Evans – Distributor explaining relationship with Dustbane, including copies of T4 slips 1985, 1988 – 1990 showing J.W. Evans as employer; and
- December 21, 1999 – Superintendent issues Notice of Proposal to Make an Order against Dustbane.

The Superintendent led evidence on the issue of delay to show that Dustbane was aware each year of the Plan's fund's rate of return and of the 12% interest rate being applied to the partial wind up and that the size of the deficit as revealed in early 1997 should have caused concern. Further, the Modern Building asset transfer took what appeared to be an inordinate

amount of time, 4 years, to complete and this hampered the completion of the partial wind-up. In addition, no funding schedule had ever been filed for the deficit shown in the 1989 report, and a funding schedule was necessary in order to obtain approval of the partial wind-up report. Finally, the fact that Dustbane did not complete actuarial valuations between 1986 and 1995 also seemed to slow down the process.

Without commenting on the source of the delay at this time, it is clear that the time spent to complete this partial wind-up contributed significantly to the deficit in this Plan. The members' benefits ought to be protected irrespective of any delay and therefore we do not believe that any delay should affect our findings above.

The question of delay, however, may be relevant to any party seeking an award of costs in this matter.

#### **D. THE DISPOSITION**

We reject Dustbane's application and direct the Superintendent to carry out her proposal contained in the Notice of Proposal.

We make no order as to the costs of this proceeding but the panel will entertain written representations on that matter from any of the parties who wish to make them.

DATED at Toronto, this 15th day of February, 2001.

Louis Erlichman  
Member of the Tribunal and of the Panel  
David Wires  
Member of the Tribunal and of the Panel





## REASONS FOR MINORITY DECISION

### A. ANALYSIS

For the reasons described below I disagree with the Majority Decision except with respect to the issues of delay and costs.

- (a) As at the partial wind-up date, was the Plan a multi-employer plan within the meaning of section 1 of the *Act*?

The Majority Decision sets out (i) the definitions of an “employer” and a “multi-employer pension plan” from section 1 of the *Act* and (ii) the testimony of the witnesses for all the parties on the issue of employer status and I will not repeat them.

Two issues were raised in this proceeding relating to this matter. The first was whether the Distributors were in fact employers within the meaning of the *Act* or whether in fact Dustbane was properly characterized as the “employer” of the Distributor’s workers for purposes of the *Act*. The second was whether, even if the Distributors were employers for the purposes of the *Act*, whether they agreed to contribute to the Plan.

While it is clear that Dustbane had significant influence on the Distributors by virtue of the bank guarantees and the terms of the Distributorships relating to signage and logo usage among other matters, it is also clear that the relationship of the Distributors and their workers was one of employer/employee. The Distributors chose who to hire, including family members, who to fire and the salary levels. Day-to-day operations were controlled entirely by the Distributors. The Distributors maintained employer status for tax purposes.

It is true that the employee/employer status has been interpreted with respect to the purpose of the relevant legislation. The question then arises

as to whether the purposes of the *Act* would alter the determination of the Distributors as employers.

The *Act* is “remedially intended” to ensure that pension benefits which are promised are paid. The purposes of the *Act* do not; however, prefer payment by one employer rather than the other. Accordingly, the purposes of the *Act* do not justify any alteration in the finding of the Distributors as employers in this proceeding.

The second issue now to be considered is whether the Distributors agreed to contribute to the Plan.

It should be recalled that the definition of “multi-employer pension plan” in section 1 of the *Act*, as quoted above, has three requirements:

- (a) two or more employers contribute to a pension plan for employees, or contributions are made on their behalf;
- (b) the contributions are made by reason of an agreement, statute, or municipal by-law; and
- (c) the employers are not affiliates within the meaning of the *Business Corporations Act*.

The third requirement was accepted by all parties as being satisfied. Given the finding that the Distributors are employers the first requirement is also satisfied. Accordingly, the matter to be determined was whether contributions were made to the Plan by the Distributors as a result of an agreement.

The 1984 restatement of the Plan provides as follows:

- s.1.8 “Employer” shall mean Dustbane Enterprises Limited, its subsidiaries or affiliated companies and its distributors who have elected in writing to participate in the Plan.

No elections were apparently ever made. Dustbane’s witness testified that when the Plan



was amended and restated in 1984 this was simply a continuation of the existing Plan and therefore, despite the Plan's wording, written elections were not necessary.

Dustbane maintained that the 5% fee in the "services" section of the Distributor Agreements was meant to cover the cost of administration of the Plan by Dustbane but not contributions to the Plan.

## 8. Services

Buyer agrees to employ Dustbane exclusively to maintain its books and records of account and Dustbane agrees to provide, in addition to this service, advice by specialists in all areas of operation, advertising and merchandising program and the fulfillment of Buyer's reasonable request for assistance, all services to be provided at a fee of 5% on Buyer's sales volume.

Buyer shall have the irrevocable right at all reasonable times to complete access to and audit said Books and Records of Accounts by an independent auditor of its choice at its own expense. Dustbane agrees to supply the services described in this paragraph with respect of any matter only where, in the opinion of the advisors of Dustbane, the interests of Dustbane and of the Buyer do not conflict.

The evidence supports the following findings:

Initially, Dustbane prepared and sent out payroll cheques to the Distributors for signature by them and distribution to their own employees. At some point in the 1980's, following an incident in which a group of cheques were lost, Dustbane moved to a system whereby Dustbane (still merely providing a payroll service) would send or deposit pay cheques directly to the Distributors' employees, and be reimbursed by the Distributors.

Both employee and employer remittances to

the Plan (as well as other benefits) were effected by means of cheques prepared by Dustbane and sent to the Distributors for signature, payable in the case of the Plan directly to the Mutual Group.

The witnesses for the Distributors could not recall signing such cheques; however, one admitted that his recollection generally was hazy and the other admitted that it was possible that he had signed such cheques.

It was not contested that the Distributors made other employer remittances by way of cheques prepared as described above, such as Canada Pension Plan, Employment Insurance and other employer-funded benefits.

Accordingly, the evidence supports the determination that the Distributors were contributing to the Plan.

The question then turns to whether the Distributors agreed to participate in the Plan.

With respect to this issue some facts are troubling. The evidence suggests that, not only did the Distributors not sign elections as required under the 1984 Plan text, they never even received a copy of the Plan text. Rather the Distributors only received annual statements for delivery to their employees and cheques for payment of contributions to the Plan.

The provision of the Distributor Agreement stated above is not at all clear with respect to the obligations that the Distributors had under the Plan. However, the Distributors had been part of the Pension Plan since 1959. The Distributors could decline to participate in the Pension Plan, and some in fact did so. Eventually, the topic of the Pension Plan came up at the Advisory Board of Dustbane and Distributors, in the context of the Distributors' desire to terminate or renegotiate their Services



Agreement with Dustbane. At this point, some Distributors specifically wanted to remain in the Plan (while not paying the 5% fee and not participating in other benefits). Dustbane was not prepared to agree to this and the decision was made that the Distributors would then cease to participate in the Plan. I disagree with the Majority Decision as to whether this decision was made unilaterally.

One Distributor witness did not recall receiving monthly statements setting out employer contributions. However, he admitted in cross-examination that he was aware when he bought the shares of his company that company made Canada Pension Plan, Employment Insurance and "group insurance" remittances, and that at least by 1983, he was aware his employees were participating in the Plan, his company was being charged for regular employer contributions for the Plan, and that he was "content" with this participation.

Accordingly, while the elections reference in the 1984 Plan text were never completed, and the Distributors do not seem to have been provided with Plan documents as would have been appropriate, it does appear that a 31 year course of participation in the Plan, including the payment of retiree benefits during that time, establish an agreement to participate in the Plan.

In summary, having found that the Distributors were employers contributing to the Plan by agreement, the Plan was a multi-employer plan within the meaning of s.1 of the Act.

This Tribunal's decision in *The Canadian Union of Public Employees, Locals No. 1144 and 1590 ("CUPE") and Superintendent of Pensions, the Sisters of St. Joseph for the Diocese of Toronto and Upper Canada (the "Sisters")*, St. Michael's

*Hospital, St. Joseph's Health Centre and Provident Centre (the "Hospitals")* (1998) No. XDEC-42, 12/18/98, (Financial Services Tribunal) ("*Sisters of St. Joseph*") is readily distinguishable from the present case.

In *Sisters of St. Joseph*, the Tribunal found that the Sisters of St. Joseph Plan was not a multi-employer pension plan but was established and maintained only for one employer, the Sisters. The Tribunal reached its conclusion on the basis that there were no separate corporate entities – only divisions of one entity and the Sisters:

- (a) owned and operated all bank accounts from which the Hospital's payroll and benefits costs were met;
- (b) appointed signing officer, auditors and board members to the Hospitals;
- (c) approved the by-laws of the Hospital;
- (d) owned the Hospital properties;
- (e) retained the power to own and operate each Hospital;
- (f) controlled bank accounts from which employee remuneration was paid; and
- (g) had the authority to transfer the assets of one Hospital to satisfy the debts of another.

The Majority Decision cites a number of provisions of the Act which relate to multi-employer plans. The Act and the Regulations thereunder do not provide a systematic code for understanding the intended treatment of multi-employer plans. Rather the legislation contains a series of apparently unconnected provisions that seem to have been intended to address only limited concerns. Multi-employer plans in the collectively bargained arena have different concerns than those in the present case. It would be preferable that the legislation would be amended to provide a more systematic





consideration of these plans and to consider the different contexts in which these plans may arise. However, the circumstances under consideration in this matter do not appear to justify overriding the appropriate legal conclusion regarding who was the employer in relation to the relevant employees and who is responsible for the liabilities of the pension plan.

(b) If the answer to issue (a) is “yes”, who is required to fund the deficit in the Plan’s fund?

While the Plan documentation could have been clearer on this issue, it would seem appropriate that given that the Distributors were employers participating in the Plan that they would be liable to the deficit allocable to their employees.

No evidence was adduced in this proceeding as to the proper allocation of the deficit and therefore we make no finding on this issue.

We do, however, note two matters arising from the evidence in this matter which are troubling and the parties may wish to consider further.

Firstly, it is unclear whether the Distributors agreed to pay the actuarial fees related to the partial wind-up. No evidence of such agreement was adduced. Prior to the wind-up all actuarial fees seemed to have been paid for out of the 5% service fee quoted above. In March 1990, Dustbane advised the Distributors by letter that the wind up may result in financial obligations:

“As you are aware, severing from the Dustbane pension plan may result in financial obligations on the part of the Distributor. Our actuarial consultants are presently in the process of preparing an estimate of what each Distributor’s obligations will be at June 1, 1990. Since the final figures can change

depending on the options chosen by your employees, it will not be possible to know the exact amounts until after June 1, 1990.”

However, that statement is quite vague as to the source of the financial obligations and certainly no mention is expressly made of the actuarial fees until most of those fees had been incurred.

Secondly, the evidence raises issues as to whether Dustbane properly supplied information regarding the Plan to Distributors and plan members, even upon request.

(c) Does the Tribunal have a jurisdiction to take into account any delay on the part of the regulator in its determination of the above issues?

I agreed with the Majority Decision with respect to this issue.

## **B. THE DISPOSITION**

In light of our conclusions, I would order the Superintendent to refrain from carrying out the proposal contained in the Notice of Proposal.

I agree with the Majority Decision with respect to the issue of costs.

DATED at Toronto, this 15th day of February, 2001.

Kathryn M. Bush  
Vice-Chair of the Tribunal and  
Chair of the Panel





INDEX NO.: FST Decision #25 (FST File No. P0145-2001)

DATE OF DECISION: February 21, 2001

PUBLISHED: Bulletin 10/1 and FSCO website

**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the “Act”);

**AND IN THE MATTER OF** a Notice of Proposal  
to Refuse to Consent (a “Notice”) by the  
Superintendent of Financial Services (the  
“Superintendent”) with respect to an applica-  
tion for withdrawal of money from a life  
income fund, a locked-in retirement account or  
a locked-in retirement income fund (a “locked-  
in account”) based on financial hardship;

**AND IN THE MATTER OF** a Hearing under  
subsection 89(8) of the *Act*.

## REASONS

1. The Applicant in this matter made an application to the Superintendent, on the basis of financial hardship, for access to funds associated with a locked-in account in her name. Specifically, the application was based on low income, one of several grounds of financial hardship prescribed by subsection 87(1) of Ontario Regulation 909, as amended (the “Regulation”), adopted under the *Act*.
2. The Superintendent proposed to refuse the application, by a Notice dated December 11, 2000, on the basis that the Applicant's expected income for the next year was more than the qualifying low income amount, determined in accordance with the formula set out in paragraph 7 of subsection 87(1) of the Regulation. The Superintendent also observed in the Notice that the Regulation (in subsection 89(6)) establishes a maximum amount, determined by a prescribed formula, that can be withdrawn from a locked-in

account on the basis of low income and that in this case, applying the formula, the maximum amount would be zero.

3. In her request for a hearing before this Tribunal, the Applicant does not allege that the Superintendent made any errors in applying the formulas, set out in the Regulation, for determining the qualifying low income amount or the maximum amount of a permissible withdrawal and the Tribunal finds no such errors.
4. This Tribunal does not have the authority to direct the Superintendent to allow an application for a withdrawal from a locked-in account that does not meet the requirements of the Regulation. Therefore, although the evidence of financial hardship on the part of the Applicant may be compelling, the application in this case cannot be granted because of the failure to meet those requirements. There are, of course, other grounds of financial hardship besides low income that can be advanced in an application for withdrawal from a locked-in account. If the circumstances of the Applicant are such that she could meet the qualifications for reliance on one or more of those other grounds, a further application could be made to the Superintendent.
5. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated December 11, 2000 in respect of the present application.



## **ORDER**

The Superintendent is hereby directed to carry out the proposal contained in the Notice, dated December 11, 2000, directed to the Applicant.

DATED at Toronto, this 21st day of February, 2001.

Colin H. H. McNairn  
Vice Chair  
Financial Services Tribunal



## FINANCIAL SERVICES TRIBUNAL: FST FILE #P139-2001

INDEX NO.: FST Decision #26 (FST File No. 139-2001)

DATE OF DECISION: February 27, 2001

PUBLISHED: Bulletin 10/1 and FSCO website

IN THE MATTER OF the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the “*Act*”);

AND IN THE MATTER OF a Notice of Proposal  
to Refuse to Consent (a “*Notice*”) by the  
Superintendent of Financial Services (the  
“*Superintendent*”) with respect to an applica-  
tion for withdrawal of money from a life  
income fund, a locked-in retirement account or  
a locked-in retirement income fund (a “locked-  
in account”) based on financial hardship;

AND IN THE MATTER OF a Hearing under  
subsection 89(8) of the *Act*.

### REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent’s Notice of Proposal to Refuse to Consent dated December 12, 2000 that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the *Act*, which reads as follows:

67.–(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent’s ground for denial was that this application (the “November

Application”), which was made on the basis of low income, was made within 12 months after the date of another successful application (the “July Application”) made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the “*Regulation*”), as follows:

89.–(4) Only one application may be made during each 12-month period.

(5) An unsuccessful application is not counted for the purposes of subsection (4).

2. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the November Application.
2. The July Application was first received by the Superintendent on June 26, 2000, then amended and re-signed by the Applicant on July 5, 2000. On July 24, 2000, the Superintendent consented to withdrawal of the full amounts requested by the Applicant, on the basis of low income, and also on the basis of a debt against the principal residence. Therefore, the July Application was a successful application on both bases for which withdrawals were requested. Only the consent on the basis of low income is relevant to the matter now before the Tribunal.
2. On November 9, 2000, the Applicant signed the November Application, in which she applied to withdraw \$5,000 from her locked-in account on the basis of low income. As this application was made within 12 months



after the successful June Application, which also included a request on the basis of low income, the November Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

This Tribunal does not have the authority to direct the Superintendent to allow an application for a withdrawal from a locked-in account that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the November Application cannot be granted because it fails to meet one of those requirements. If in July, 2001, 12 months after the date of the successful July Application, the circumstances of the Applicant are such that she could meet the qualifications for reliance on low income or debt against the principal residence, a further application for withdrawal of locked-in funds can then be made to the Superintendent. Prior to that time, any application of this nature must be on one of the other grounds of financial hardship prescribed by the Regulation.

In the circumstances, the Tribunal must affirm the Superintendent's Notice dated December 12, 2000 in respect of the November Application.

### **ORDER**

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated December 12, 2000, directed to the Applicant.

DATED at Toronto, this 27th day of February, 2001

Mr. C. S. Moore

Member, Financial Services Tribunal







**Notes:**

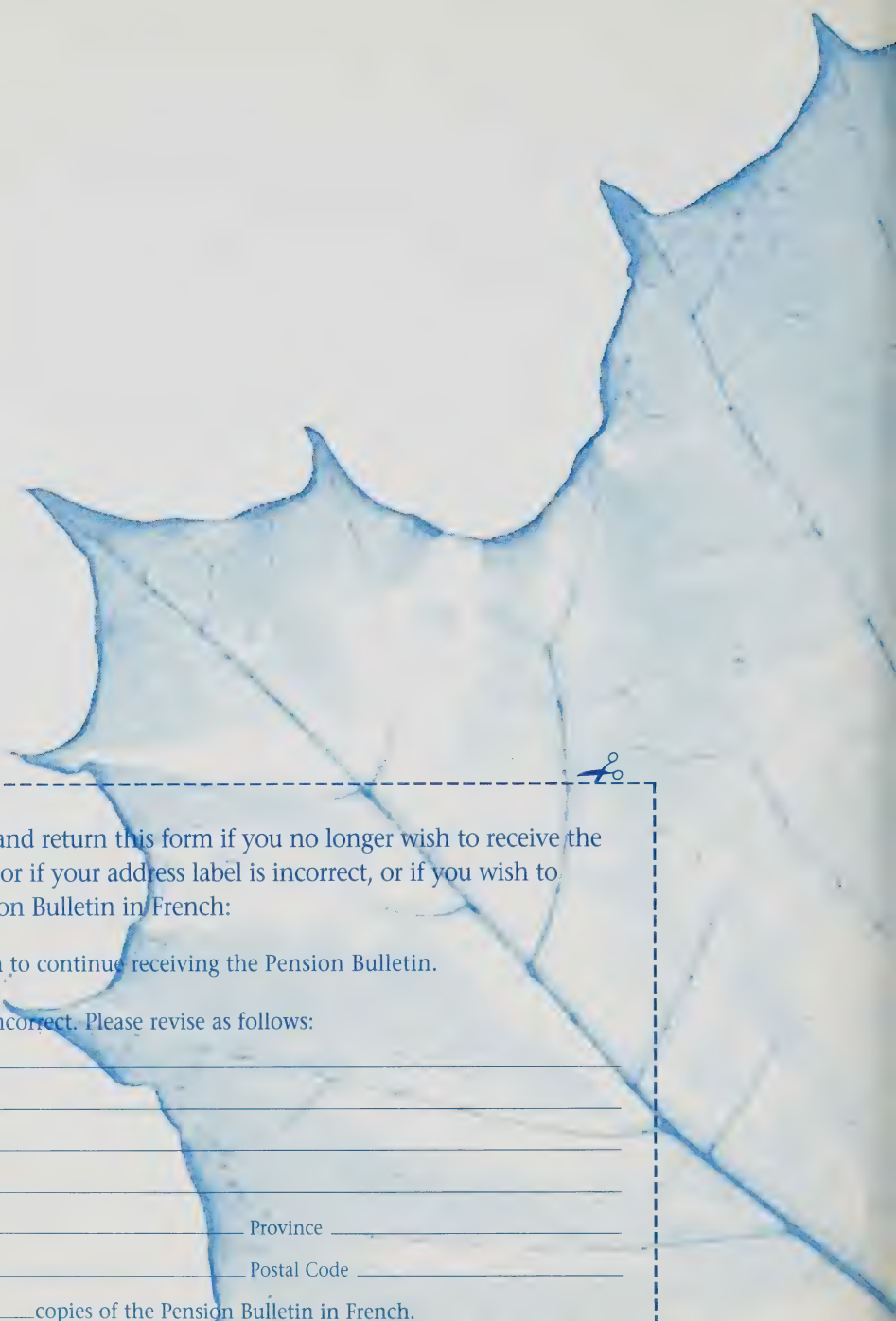
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The Editor, *Pension Bulletin*  
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# PENSION BULLETIN

SEPTEMBER, 2001 • VOLUME 10, ISSUE 2

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## GENERAL ANNOUNCEMENTS

### Update on the Proposed Merger of FSCO and the OSC

The Government is currently reviewing the comments and suggestions it has received from its second consultation on the proposed merger between the Ontario Securities Commission (OSC) and the Financial Services Commission of Ontario (FSCO) into a single financial services regulator.

John R. O'Toole, Parliamentary Assistant to the Minister of Finance, led the two-month consultation, which was based on the "Establishing a Single Financial Services Regulator: Consultation Draft" that became available for public review on Thursday, April 12, 2001. The deadline for submissions to the draft legislation was Friday, June 29, 2001.

The consultation draft incorporated the comments received during the first consultation which was based on the discussion paper "Improving Ontario's Financial Services Regulation: Establishing a Single Financial Services Regulator." David Young, former Parliamentary Assistant to the Minister of Finance, conducted the initial consultation in the fall of 2000, and received comments from consumers, investors, pension plan members and financial services sector members. While the majority of stakeholders endorsed the plan to merge the OSC and FSCO, many expressed a desire to see further details.

The consultation draft would establish a new commission to be known as the Ontario Financial Services Commission. It would have a Chair, a Commission with 18 members, a separate Pension Tribunal, and would be

self-funding and have specified rule-making authority.

Over the past few months, FSCO continued to discuss with stakeholders specific concerns relating to representation and governance, accountability, and the extent of the rule-making under certain statutes administered by FSCO. These discussions have been very productive and informative.

You can view the consultation draft on FSCO's web site at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca)





## Appointment of Deputy Superintendent, Pension Division, FSCO

The Financial Services Commission of Ontario recently announced organizational changes to help FSCO meet the continuing regulatory challenges of sustaining a fair, efficient and effective financial services marketplace.

According to the Superintendent, the changes respond to stakeholders' desire for clearly identifiable regulatory accountability and a strong alignment of policy development and service delivery.

On July 13, 2001, Dina Palozzi, Chief Executive Officer and Superintendent of Financial Services, announced the appointment of Dave Gordon as the new Deputy Superintendent, Pensions. The Superintendent has delegated to the Deputy Superintendent the authority to supervise the pension sector, exercising the powers and duties conferred upon the Superintendent by the *Financial Services Commission of Ontario Act* and other legislation. Mr. Gordon had previously been the Director of the Pension Plans Branch.

The announcement also included the creation of a new Pension Division at FSCO, headed by the Deputy Superintendent. Tom Golfetto has been appointed Acting Director, Pension Plans Branch; he had been the Senior Manager of Operations in the Pension Plans Branch, and had previously established the Financial Hardship Unlocking section at FSCO.

In addition, Ms. Palozzi announced that CAPSA, CCIR and Joint Forum activities, along with Public Affairs and an expanded responsibility for stakeholder relations, have been consolidated into a new branch, Corporate Policy & Public Affairs, under Martin Ship.

## Dina Palozzi Retires

On July 13, 2001, Dina Palozzi, Chief Executive Officer and Superintendent of Financial Services, retired from the Ontario Public Service, concluding a 29-year career with the Government of Ontario. Ms. Palozzi had been CEO and Superintendent of FSCO since January 1998, a period during which the financial services sector saw tremendous change.

As FSCO's first CEO, Ms. Palozzi brought together the Ontario Insurance Commission, the Pension Commission of Ontario, and the Deposit Institutions Division of the Ministry of Finance, utilizing the strengths within each to establish FSCO as an effective, responsive regulator.

Ms. Palozzi successfully established effective mechanisms for addressing significant pension policy and regulatory issues, through a heightened level of consultation with stakeholder groups. Regulatory decisions, for instance those relating to the treatment of surplus on partial wind up, clearly defined long outstanding issues and provided clarity for the pension industry.

A leader at the national level, Ms. Palozzi chaired the Joint Forum of Financial Market Regulators. She was also a driving force behind the renewal of the Canadian Association of Pension Supervisory Authorities (CAPSA) and the Canadian Council of Insurance Regulators (CCIR) as effective national organizations promoting harmonized regulatory efforts across financial services sectors.

In CAPSA, Ms. Palozzi played an important role as Vice-Chair in the formation of CAPSA's secretariat, and through her enthusiastic support CAPSA was able to complete a number of endeavours.

Philip Howell has been named to the interim position of CEO and Superintendent of Finance Services (Acting) for FSCO, effective July 16, 2001. The search to appoint a permanent replacement has commenced. Stakeholders are being consulted as part of this recruitment process.





## **Minister of Finance Consults on Surplus Distribution From Defined Benefit Pension Plans**

Following through on a promise made in December 2000, Finance Minister Jim Flaherty released a consultation paper, "Surplus Distribution From Defined Benefit Pension Plans" on July 18, 2001. The paper outlines a number of proposals designed to ensure that employers, employees and pensioners are treated in an equitable manner in pension surplus sharing arrangements.

The Ministry of Finance is inviting stakeholders to participate in the consultation by providing comments on proposed reforms to the surplus distribution provisions in the *Pension Benefits Act*. The consultation paper may be obtained at the Ontario Government Bookstore or on the Ministry of Finance website at [www.gov.on.ca/FIN](http://www.gov.on.ca/FIN)

Submissions should be forwarded by  
September 14, 2001, to:

John O'Toole, MPP

Parliamentary Assistant to the  
Minister of Finance

Ontario Ministry of Finance

7th Floor, & Queen's Park Crescent

Toronto, ON

M7A 1Y7



## New Defined Contribution Plan Wind Up Form

April 2001

Dear Financial Services Commission of Ontario Pension Stakeholders,

I am delighted to introduce a standardized *Wind Up Report for Defined Contribution Pension Plans* (a copy of the form and the instructions for completing it are attached). It was developed by the FSCO-CLHIA Procedures Working Group which included representatives from the insurance industry along with staff from the CLHIA and FSCO.

This new form, which has been endorsed by the CLHIA, will simplify the preparation of wind up reports, will allow FSCO staff to process the reports in a more efficient and timely manner and will expedite the release of member entitlements on plan wind up. It is available in pdf format on our web site at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca) under the *Forms* section. Wind up reports submitted in previous formats will continue to be accepted and processed by FSCO. If you have any questions, please contact Mr. Grant Ardern at FSCO's Pension Plan Branch, at (416) 226-7788.

I would like to thank all those involved in developing this form. It is representative of the benefits that can be achieved through co-operative initiatives between the regulator and the industry. Such co-operation enables us to respond effectively to the needs of industry stakeholders by reducing the cost of regulation and most importantly ensuring that the rights and benefits of pension plan members are protected.

Yours truly,

Dina Palozzi  
Chief Executive Officer and  
Superintendent of Financial Services



## INSTRUCTIONS FOR COMPLETING THE STANDARDIZED WIND UP REPORT FOR DEFINED CONTRIBUTION PENSION PLANS

The *Pension Benefits Act*, R.S.O. 1990 requires that a wind up report shall be filed for a pension plan that is to be wound up in whole or in part, pursuant to s. 70. The wind up must be effected and administered in accordance with the plan text, and should the plan text require that an amendment or resolution be made in order to wind up the plan, the amendment or resolution should be filed along with a completed Application for Registration of a Pension Plan Amendment (Form 1.1).

Please follow these instructions in completing the standardized Wind Up Report for Defined Contribution Pension Plans. If there are any prior defined benefit accruals that are being held under a prior version of the plan, or if there are any defined benefit past service benefits for any members, the plan should be considered a defined benefit plan. The standardized wind up report is not applicable to plans with Group Annuity Benefits.

### PLAN INFORMATION

1. **Registration Number** - enter the plan registration number.
2. **Name of Pension Plan** - enter the legal name of the pension plan.
3. **Employer/Plan Sponsor** - enter the legal name of the employer or plan sponsor.
4. **Pension Fund Trustee(s)** - enter the name of the organization(s) holding the pension fund assets.
5. **Collective Bargaining Agent** - enter the name of the Collective Bargaining Agent representing the members. If there is no Collective Bargaining Agent, check the N/A box.
6. **Contributory Plan/Non-Contributory Plan** - check the Contributory Plan box if the plan requires that members make contributions or check the Non-Contributory Plan box if members are not required to contribute.

### WIND UP INFORMATION

7. **Type of Wind Up** - check the appropriate box for a full or partial wind up. For partial wind ups, please identify the partial wind up group.
8. **Effective date of Wind Up** - enter the effective date of the wind up.
9. **Effective date of Wind Up complies with s. 68(5)** - check yes if the effective date is in compliance with subsection 68(5) which states: *"The effective date of the wind up shall not be earlier than the date member contributions, if any, cease to be deducted, in the case of contributory pension benefits, or, in any other case, on the date notice is given to members"*. If the effective date is not in compliance, check no and explain the reason.
10. **End of last period for which contributions were deducted** - enter the date of the end of the last period for which contributions were deducted from members' earnings (for contributory plans only).
11. **All employee and employer contributions remitted to the fund to the effective date of wind up** - if all employee and employer contributions, including any profit sharing allocation required under the plan, have been remitted, check yes. If all contributions have not been remitted, check no and explain.
12. **Date last notice given to members** - enter the final date the notice of the wind up was given to members.
13. **Notice content and distribution complies with ss. 68(2), 68(3) and 68(4)** - check yes if the notice content and distribution complies with the appropriate sections.  
For all wind ups, subsection 68(2) requires that: *"The administrator shall give written notice of proposal to wind up the pension plan to,*  
  - (a) *the Superintendent*
  - (b) *each member of the pension plan*
  - (c) *each former member of the pension plan*
  - (d) *each trade union that represents members of the pension plan*
  - (e) *the advisory committee of the pension plan; and*

(f) any other person entitled to a payment from the pension fund."

For partial wind ups, the notice distribution is also subject to subsection 68(3) which states: "In the case of a proposal to wind up only part of a pension plan, the administrator is not required to give written notice of the proposal to members, former members, or other persons entitled to payment from the pension fund if they will not be affected by the proposed partial wind up."

In addition, the content of the wind up notice must comply with subsection 68(4) which requires that "The notice of proposal to wind up shall contain the information prescribed by the regulations." (See section 28 of Regulation 909) If the notice is not in compliance with the relevant subsections, check no and provide an explanation.

14. **Date report sent to Collective Bargaining Agent** - enter the date a copy of the wind up report was sent to the Collective Bargaining Agent representing the members (if applicable). Approval of the wind up will not be granted until 30 days after the date the report was provided to the members' agent.
15. **Financial Information: Full Plan** - enter the Assets, Liabilities and Surplus (if any) of the entire plan as at the effective date of the wind up. Surplus is the excess, if any, of the value of the assets over the value of the liabilities as at the date of the wind up.
16. **Financial Information: Affected by Wind Up** - enter the Assets, Liabilities and Surplus (if any) related to the wind up, as at the effective date of the wind up. If there is a surplus, provide an explanation of how the surplus was created, the proposed treatment of the surplus and the allocation method.
17. **Legislative Requirements** - provide confirmation that full vesting and transfer rights have been provided to the members, and that benefits that are required to be locked-in, have been locked-in.

#### FILING REQUIREMENTS (FULL WIND UP ONLY)

18. **All outstanding Annual Information Returns have been filed** - check yes if all outstanding Annual Information Returns, including the final Annual Information Return for the period ending at the effective date of the wind up, have been filed. If all Annual information Returns have not been filed, check no and provide an explanation.
19. **All outstanding Financial Statements have been filed** - check yes if all outstanding Pension Fund Financial Statements, including financial statements for the period ending at the effective date of the wind up, have been filed. If all Financial Statements have not been filed, check no and provide an explanation.

#### EXPLANATIONS

Enter any information or explanation required by these instructions along with reference to the section number and any other information that may have a material impact on the wind up of the pension plan. Attach additional pages if necessary.

#### CERTIFICATION OF COMPLIANCE

The Certification of Compliance must be signed by a person described in section 15 of Regulation 909. The requirements of section 15 are as follows:

- 15(1) *The reports and certificates required under section 70 of the Act and under subsection 3(1) and sections 13 and 14 must be prepared by an actuary.*
- 15(2) *Despite subsection (1) reports and certificates in respect of,*
  - (a) *a pension plan where all pension benefits are defined contribution benefits,*
  - (b) *a fully insured pension plan, established prior to the 1<sup>st</sup> day of January, 1987 underwritten by a contract or contracts with an insurance company and that does not require any contributions to be made by employees; or*
  - (d) *a pension plan underwritten by a contract or contracts issued under the Government Annuities Act (Canada),*

*may be made by an accountant or a person authorized by an insurance company, a trust corporation or by the Annuities Branch of the Department of Labour of the Government of Canada, responsible for administering the pension plan or pension fund.*



Financial Services  
Commission  
of Ontario



### WIND UP REPORT FOR DEFINED CONTRIBUTION PENSION PLANS

Note: Section references are to the *Pension Benefits Act*, R.S.O. 1990 (the "Act"), unless otherwise indicated.

#### Plan Information

1. Registration Number: \_\_\_\_\_

2. Name of Pension Plan: \_\_\_\_\_

3. Employer/Plan Sponsor: \_\_\_\_\_

4. Pension Fund Trustee(s): \_\_\_\_\_

5. Collective Bargaining Agent: \_\_\_\_\_

☐ N/A

6. ☐ Contributory Plan ☐ Non-Contributory Plan

#### Wind Up Information

7. Type of Wind Up: ☐ Full

☐ Partial

Identify Partial Wind Up Group (if applicable) \_\_\_\_\_

8. Effective date of Wind Up: \_\_\_\_\_

yyyy / mm / dd

9. Effective date of Wind Up complies with s. 68(5):

☐ Yes ☐ No

10. End of last period for which  
contributions were deducted: \_\_\_\_\_

yyyy / mm / dd

11. All employee and employer contributions remitted to the  
fund to the effective date of wind up: ☐ Yes ☐ No

12. Date last notice given  
to members: \_\_\_\_\_

yyyy / mm / dd

13. Notice content and distribution complies with ss. 68(2),  
68(3) and 68(4) (including s. 28 of Regulation 909):

☐ Yes ☐ No

14. Date report sent to Collective  
Bargaining Agent: ☐ N/A

yyyy / mm / dd

15. Financial Information: Full Plan

Assets (Market Value) \_\_\_\_\_

Liabilities \_\_\_\_\_

Surplus \_\_\_\_\_

16. Financial Information: Portion affected by Wind Up

Assets (Market Value) \_\_\_\_\_

Liabilities \_\_\_\_\_

Surplus \_\_\_\_\_

[Please provide an explanation of how surplus was created, the proposed treatment of the surplus and the allocation method, if applicable]

17. Legislative Requirements - The following requirements have been applied:

☐ Full Vesting

☐ Transfer Rights

☐ Benefits locked-in

#### Filing requirements (Full Wind Up only)

18. All outstanding Annual Information Returns have been filed:

☐ Yes ☐ No

19. All outstanding Financial Statements have been filed:

☐ Yes ☐ No

**Explanations (Include reference to section number):**

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**Certification of Compliance**

I certify that

- a) I am a person described in section 15 of Regulation 909 made under the Act,
- b) I am aware of, or have consulted with professionals who have advised me of the requirements of the pension legislation and Regulations of Ontario and of those other jurisdictions that apply to one or more members, former members or other beneficiaries of the Pension Plan (the "Pension Legislation"),
- c) I have reviewed this report,
- d) the information contained in this wind up report is true and accurate and this report is complete,
- e) the benefits and options have been determined in accordance with the terms of the Pension Plan and meet the minimum requirements of the Pension Legislation; and
- f) to the best of my knowledge and belief, based on the information and advice provided to me, including that referred to herein, this report complies with the requirements of the Pension Legislation, except as noted in this report.

DATED this \_\_\_\_\_ day of \_\_\_\_\_  
(day) (month) (year)

It is an offence under the *Criminal Code*, R.S.C. 1985, c. C-46, as amended, for anyone to knowingly make a false document with the intent that it be acted on as genuine.

Signature \_\_\_\_\_

Name \_\_\_\_\_

Name and Address of Organization  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_( ) \_\_\_\_\_ ext. \_\_\_\_\_  
Telephone Number**For Office Use Only**



## Pension Plans Branch – Staff Changes

There have been several additions to the staff of the Pension Plans Branch. Anna Vani, Peter Dunlop, Julina Lam, Leonard Peter, Hae-Jin Kim and Preethi Anthonypillai have all joined the Pension Plans Branch in the capacity of Pension Officer. Chantal Laurin has assumed the position of Pension Officer, Bi-lingual.

## Contacts for Plan Specific Enquiries

Contact Name	Title	Phone Number	Allocation Alpha Range
Jaan Pringi	Sr. Pension Officer	416-226-7826	
Gulnar Chandani	Pension Officer	416-226-7770	#'s - Associated
Penny McIlraith	Pension Officer	416-226-7822	Associates - Bulk
Tim Thomson	Pension Officer	416-226-7829	Bull - Cem
Irene Mook-Sang	Pension Officer	416-226-7824	Cen - Cz
Kathy Carmosino	Pension Officer	416-226-7823	I - King
Preethi Anthonypillai	Pension Officer	416-226-7812	Kinh - Mark
Gino Marandola	Sr. Pension Officer	416-226-7820	
Calvin Andrews	Pension Officer	416-226-7768	Gko - H
Jeff Chuchman	Pension Officer	416-226-7807	D - Em
John Graham	Pension Officer	416-226-7774	Marl - Nes
Julina Lam	Pension Officer	416-226-7815	Net - Pep
Stanley Chan	Pension Officer	416-226-7806	Peq - Rob
Anna Vani	Pension Officer	416-226-7833	
Rosemin Jiwa Jutha	Sr. Pension Officer	416-226-7816	
Chantal Laurin	Pension Officer	416-226-7808	En - Gkn
Todd Hellstrom	Pension Officer	416-226-7814	Roc - Sons
Hae-Jin Kim	Pension Officer	416-226-7876	Sont - The Drop
David Allan	Pension Officer	416-226-7803	The Droq - Unicorp
Leonard Peter	Pension Officer	416-226-7855	Unicorp - Z
Peter Dunlop	Pension Officer	416-226-7860	

## HEARINGS/COURT MATTERS

### Enforcement Matters

Charges laid under the *Pension Benefits Act*.

#### i. The Raxlen Clinic

The Raxlen Clinic and three of the partners of The Raxlen Clinic were charged under the *Pension Benefits Act* with failing to file a financial statement for three separate years in respect of the Supplemental Pension Plan for Employees of The Raxlen Clinic. The Raxlen Clinic was also charged with failing to file an actuarial valuation for three separate years. The trial of The Raxlen Clinic and the three partners was scheduled for March 14, 2002. However, on July 3, 2001, the Superintendent of Financial Services brought a motion before the Ontario Court of Justice to withdraw all charges. The Court granted the motion and all charges were withdrawn.

#### ii. Chef's Catering Limited and its officer/director

Chef's Catering Limited and its sole officer and director in his personal capacity were charged with failing to remit employer contributions to the Pension Plan for Employees of Chef's Catering Limited.

On June 19, 2001, the Company was found guilty of failing to make the required contributions to the Plan. The Ontario Court of Justice ordered the Company to pay restitution in the amount of the outstanding contributions to the pension fund and, in addition, the Court sentenced the Company to a fine of \$750.00.

### Court Matters

#### i. Retirement Income Plan for Salaried Employees of Weavexx Corp. Registration No. 264663

On November 29, 1999, the Superior Court of Justice, Ontario Divisional Court, heard an application for judicial review brought by a group of former members of the Retirement Income Plan for Salaried Employees of Weavexx Corp. (the "Weavexx Plan"), who wanted to set aside the Superintendent of Pensions' August 1997 consent to a transfer of assets from the Weavexx Plan to the BTR Pension Plan for Canadian Employees (the "BTR Plan").

On May 30, 2000, the Court granted the application on the basis that the Superintendent of Pensions had exceeded his jurisdiction in failing to consider the issues of surplus, trust and a requested partial wind up of the Weavexx Plan.

On November 16, 2000, the Court issued an Addendum finding that the return of assets to the Weavexx Plan was not to be the subject of a Financial Services Tribunal hearing. The Court also found that any decision made by the Superintendent of Financial Services in respect of the requested partial wind up was to be referred to the Tribunal for a hearing. Finally, the Court awarded the applicants costs in the amount of \$54,294.06.

Both the Superintendent of Financial Services and BTR Inc. sought leave to appeal these decisions. On February 26, 2001, the Ontario Court of Appeal granted leave, ordering that this appeal be heard together with the appeal in Colgate-Palmolive. No date has been set for the hearing of the appeal to date.





## **ii. Colgate-Palmolive Canada Inc. Pension Plan for Salaried and Non-Union Hourly Employees**

On November 17, 2000, the Superior Court of Justice, Ontario Divisional Court, heard an application for judicial review brought by a group of former members of the Colgate-Palmolive Canada Inc. Pension Plan for Salaried and Non-Union Hourly Employees (the "Colgate Plan"), who wanted to set aside the Superintendent of Pensions' December 1995 consent to a transfer of assets from the Bristol-Myers Canada Inc. Retirement Income Plan (the "Bristol-Myers Plan") to the Colgate Plan. The applicants also wanted the Superintendent's August 1994 approval of a partial wind up report filed by the Colgate Plan set aside.

On November 29, 2000, the Court dismissed the application for judicial review. The Court found that the applicants, as members of the importing pension plan, had no right to object to the transfer; any right to object would have been exercised when the amendment to the Colgate Plan respecting the transfer was filed. The Court also found that there was no evidence to support a partial wind up involving additional former members of the Colgate Plan. The applicants sought leave to appeal this decision. On February 26, 2001, the Ontario Court of Appeal granted leave, ordering that this appeal be heard together with the Weavexx appeal. No date has been set for the hearing of the appeal to date.

## **iii. Pension Plan for Employees of Monsanto Canada Inc., Registration Number 341230, FST File P0013-1998**

On November 30, 1998, the Superintendent issued a Notice of Proposal to Refuse to Approve a Partial Wind Up Report filed by Monsanto in respect of a 1997 plant closure. The grounds for the refusal were: (a) the wind up report did not deal with the surplus distribution on partial wind up; (b) the payment of benefit enhancements on wind up to certain members constituted an inequitable distribution of surplus, and an indirect payment of surplus to the employer without following the statutory requirements for the payment of surplus to the employer; and (c) the wind up report provided that the funds relating to benefits of those in the partial wind up group were to remain in the pension plan's fund rather than being distributed by way of a purchase of annuities.

On December 31, 1998, Monsanto Canada Inc. ("Monsanto") requested a hearing before the Financial Services Tribunal in respect of the Notice of Proposal.

The hearing was held on January 10 - 12 and February 7 - 11, 2000. The Tribunal issued majority and minority Reasons dated April 14, 2000, which were published in Volume 9, Issue 2 of the Pension Bulletin. In the result, the Tribunal directed the Superintendent to approve the Partial Wind Up Report.

The decision of the Tribunal was appealed to the Superior Court of Justice, Ontario Divisional Court. On March 19, 2001, the Court allowed the appeal on the basis of its conclusion that the only reasonable interpretation of subsection 70(6) of the *Pension Benefits Act* was that a distribution of surplus is required on partial wind up. The Court also found that



the doctrine of legitimate expectations did not apply. The Court adopted the minority Reasons of the Tribunal and directed the Superintendent to carry out the Notice of Proposal to Refuse to Approve.

Monsanto, the Association of Canadian Pension Management (ACPM), and the National Trust Company sought leave to appeal the decision of the Divisional Court. On June 28, 2001, the Ontario Court of Appeal granted leave. No date has been set for the hearing of the appeal to date.

#### **iv. Ontario Teachers' Pension Plan, Registration Number 345785, FST File P0060-1999**

On June 16, 1999, the Ontario Teachers' Pension Plan Board filed a request for hearing in respect of the Superintendent's Notice of Proposal dated May 6, 1999, to order the Ontario Teachers' Pension Plan Board to comply with section 51 and subsection 48(13) of the *Pension Benefits Act* and pay to a deceased member's former spouse certain amounts or benefits under a domestic contract.

The hearing was held on March 27, 2000. Reasons for Decision were released on June 9, 2000, and were published in Volume 10, Issue 1 of the Pension Bulletin. The former spouse has appealed this decision to the Superior Court of Justice, Ontario Divisional Court. No date has been set for hearing of the appeal to date.

#### **v. Retirement Plan of Dustbane Enterprises Limited, Registration Number 229419, FST File P0095-2000**

On January 26, 2000, Dustbane Enterprises Limited filed a request for hearing in respect of the Superintendent's Notice of Proposal dated December 21, 1999, proposing to order Dustbane Enterprises Limited to pay into the pension fund for the Plan an amount equal to the total of all payments that under the *Pension Benefits Act*, the regulations and the Plan, were due or that had accrued and had not been paid into the pension fund as at June 1, 1990, plus interest to the date of payment. Such payment was to be made within sixty (60) days from the date of the Proposed Order.

The hearing was held on October 3 to 5 and October 16, 2000.

The Tribunal released its decision on February 15, 2001. The Reasons for Decision were published in Volume 10, Issue 1. The majority found that the plan was not a multi-employer pension plan and that Dustbane was therefore liable for the deficit. The dissent found that Dustbane was a multi-employer pension plan, that the distributors were therefore liable for the deficit, but that Dustbane should contribute to the deficit because it had kept the distributors in the dark and because much of the deficit was attributable to actuarial fees. The panel unanimously found that any delay could not excuse compliance with the *Pension Benefits Act*.

On March 16, 2001, Dustbane appealed this decision to the Superior Court of Justice, Ontario Divisional Court. No date has been set for hearing of the appeal to date.





## LEGISLATIVE CHANGES / REGULATORY POLICIES

Financial Services Commission of Ontario  
Commission des services financiers de l'Ontario

SECTION:	Annual Information Return (AIR)
INDEX NO.:	A500-400
TITLE:	General Information Regarding Annual Information Returns and Fees - PBA s. 20 - Regulation 909 s. 18
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (June 2001)
EFFECTIVE DATE:	July 1, 2001
REPLACES:	A500-105, A500-150, A500-151, A500-175, A500-200, A500-203, A500-205, A500-210, A500-225, A500-800, A500-900

This policy replaces A500-105, A500-150, A500-151, A500-175, A500-200, A500-203, A500-205, A500-210, A500-225, A500-800 and A500-900 as of the effective date of this policy.

*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.*

### Requirement to File an Annual Information Return

Administrators of pension plans registered with the Financial Services Commission of Ontario ("FSCO") are required under section 20 of the PBA and section 8409 of the regulations made under the federal *Income Tax Act*, R.S.C. 1985 (5th supp.), c. 1 ("ITA") to file an Annual Information Return ("AIR"). To satisfy these requirements, plan administrators must file

the AIR (Form 2) approved for use by the Superintendent of Financial Services ("Superintendent") within the deadlines specified below.

The AIR required to be filed was jointly developed by FSCO and the Canada Customs and Revenue Agency ("CCRA"). Three months after the fiscal year end of a plan, FSCO will automatically send the plan administrator an AIR containing pre-printed information specific to that plan. The administrator must complete the AIR (correcting any pre-printed information that is no longer accurate) and send the completed AIR to the Revenue Operations and Client Services Branch of the Ministry of Finance (which processes completed AIRs for FSCO and the CCRA) at the address set out in the AIR instructions.

Plan administrators must complete and return the AIR sent to them by FSCO that contains the



pre-printed plan information. Administrators are not permitted to file information using blank AIR forms or recreated versions of the AIR. Pre-printed AIRs are available no earlier than three months after the fiscal year end of a plan.

Plan administrators should not file completed AIRs with the CCRA. The AIR sent to the Revenue Operations and Client Services Branch of the Ministry of Finance satisfies both the PBA and ITA requirements for filing an AIR, and the CCRA will be provided with any information it requires from the AIR.

### **AIR Filing Fee**

When filing an AIR, the plan administrator must pay the filing fee established by the Minister of Finance. The fee payable is calculated by the administrator when completing the AIR. As of May 1, 2000, the fee for filing an AIR is \$6.15 per plan member, with a minimum fee of \$200 and a maximum fee of \$50,000.

A cheque payable to the "Minister of Finance" for the AIR filing fee payable should be remitted to the Revenue Operations and Client Services Branch of the Ministry of Finance along with the completed AIR within the deadlines specified below.

### **Deadlines for Filing the Annual Information Return and Remitting the Filing Fee**

Under section 18 of the Regulation, if a pension plan provides only defined contribution benefits, the plan administrator must file the AIR and remit the AIR filing fee no later than six months after the last day of the plan's fiscal year. For any other type of pension plan (such as any plan that provides defined benefits), the plan administrator must file the AIR and remit the AIR filing fee no later than nine months

after the last day of the plan's fiscal year.

### **Late Filing of the Annual Information Return and Filing Fee**

If a completed AIR is not received on or before the due date for its filing, it will be considered to be late. Where an AIR is filed late, a penalty fee of 10% in addition to the original AIR filing fee will become payable by the plan administrator as of the due date for filing the AIR.

A fixed rate of interest must also be paid on any late AIR filing fee from the day following the due date for filing the AIR to the date payment is actually received. The authority to charge interest on late fees is provided in subsection 10(1) of the *Financial Administration Act*, R.S.O. 1990, c. F12. Interest is charged against the AIR filing fee outstanding (exclusive of any penalty fee) and is calculated on a simple interest basis. For information about the interest rate that is applied, please contact FSCO at (416) 226-7776.

It is the plan administrator's responsibility to ensure that the completed AIR is filed by the filing due date. Failure to file the AIR and remit the AIR filing fee within the prescribed deadlines is a violation of the PBA and Regulation. Because of the importance of AIR filings in protecting plan members' benefits, FSCO will initiate vigorous enforcement, including prosecution, against those who do not comply voluntarily with these requirements.

### **Unreceived or Lost Annual Information Returns**

Sometimes a plan administrator may not receive the pre-printed AIR that has been sent by FSCO. The most frequent reasons for unreceived or lost AIRs are a change in the address of the administrator or a change in the contact person for the administrator to whom the AIR

is addressed. FSCO should always be notified immediately by the administrator of these types of changes.

It is the administrator's responsibility to obtain a copy of the pre-printed AIR if one has not been received from FSCO. If the pre-printed AIR is not received within four months after the year end of the plan, or if the AIR has been lost, the administrator should contact FSCO at (416) 226-7776 to have a new pre-printed AIR sent to the administrator.

Regardless of when the administrator receives the pre-printed AIR, the completed AIR must be filed with the required filing fee by the deadline specified above, or it will be considered to be late and the penalty fee specified above, plus interest, will apply.

### **Unsigned Annual Information Returns**

Sometimes FSCO receives AIRs which have not been signed, as required in the Certification section of the AIR. An AIR is not complete unless the Certification section has been signed.

If an AIR is received by FSCO which has not been signed, FSCO will retain a photocopy of the AIR received and will retain any filing fees remitted. The original copy of the AIR will be returned to the administrator for proper signing and the completed AIR must be returned to FSCO within 30 days; otherwise the AIR filing requirements will not have been satisfied.

### **Annual Information Returns Required on Full Plan Wind Up**

Under subsection 29(4) of the Regulation, where a pension plan is being fully wound up, all AIRs up to the effective date of the wind up must be filed and payment of the applicable AIR filing fees must be received within six

months of the effective date of the wind up.

### **Further Information**

For further information about filing AIRs and remitting AIR filing fees, please contact FSCO at (416) 226-7776.

Financial Services Commission of Ontario  
Commission des services financiers de l'Ontario

SECTION:	Transfer Values
INDEX NO.:	T800-401
TITLE:	Recalculation of Transfer Values - PBA ss. 42(1) and 73(2) - Regulation 909 ss. 19(1), 20(1), 24(11.1), 24(12) and 29(2)
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (July 2001)
EFFECTIVE DATE:	August 1, 2001
REPLACES:	C125-500, T800-400

This policy replaces C125-500 and T800-400 as of the effective date of this policy.

*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.*

## QUESTION

Since January 1, 1988, the *Pension Benefits Act* (the "PBA") has provided mandatory portability rights for individual pension plan members on termination of employment (now s. 42) and wind-up of a pension plan (now s. 73). In both circumstances, members are entitled to transfer the commuted value of their deferred pension to another pension fund, if the administrator of that plan agrees to accept the transfer, transfer the commuted value into a prescribed retirement savings arrangement or use the commuted value to purchase a life annuity.

When calculating a commuted value to be transferred on member termination as provided in subsection 42(1) of the PBA, subsection 19(1) of Regulation 909 (the "Regulation") requires that the commuted value shall not be less than the value determined in accordance with the Recommendations for the Computation of Transfer Values from Registered Pension Plans (the "Recommendations") issued by the Canadian Institute of Actuaries and effective on September 1, 1993.

When a person elects to exercise his or her entitlement under subsection 73(2) of the PBA on plan wind-up, subsection 29(2) of the Regulation provides that the commuted value of the pension benefit shall not be less than the value determined in accordance with the Recommendations. Subsection 29(2) of the Regulation became effective on March 3, 2000.

In both situations, some period of time may elapse between the date of computation and

the date of transfer. Section 4 of the Recommendations suggests that an actuary should establish the period for which the transfer value applies before recomputation is required. When some period of time has elapsed between the date of computation and the date of transfer, should transfer values calculated under subsections 19(1) and 29(2) of the Regulation be recomputed?

## ANSWER

Before addressing this question, a distinction must be made between commuted values calculated for two separate purposes:

- when a calculation is made with respect to a mandatory portability right that becomes effective on an individual's termination date or the date of plan wind-up; and
- when a calculation is made with respect to any other portability right provided for under a pension plan which becomes effective after an individual's termination date.

It is FSCO's view that section 4 of the Recommendations does not apply to commuted values calculated in the first instance, when a member has a mandatory right to make a portability election within a prescribed period and has made the election within this period.

## Prescribed Election Periods

Section 42 of the PBA stipulates that terminated members (individual members who terminate employment or cease to be members of the pension plan) who are not eligible to receive an immediate pension at date of termination have the right to elect a portability option. Subsection 73(2) of the PBA requires that a person entitled to a pension benefit on the wind-up of a pension plan, other than a

person receiving a pension, is also entitled to a portability option. These rights, however, are time-limited.

The required time period for making a transfer election under section 42 of the PBA is prescribed under subsection 20(1) of the Regulation. In accordance with clause 41(1)(p) of the Regulation, the election period must be identified in the termination statement provided to the member. If an individual does not make an election within the prescribed period, the right to require the administrator to transfer the commuted value is extinguished (subsection 42(4) of the PBA). In this case, the default option is a deferred pension payable from the pension plan.

Of course, in circumstances where an administrator fails to provide a written statement within the period prescribed under subsection 41(2) of the Regulation, a terminated member's election period cannot be shortened as a consequence of late notice. Accordingly, the appropriate election period would commence at the date the statement is provided.

The required time period for making a transfer election under section 73(2) is prescribed in subsection 28(3) of the Regulation. In accordance with clause 28(2)(o) of the Regulation, the election period must be identified in the notice statement provided to the member. If an individual does not make an election within the prescribed period, the right to require the administrator to transfer the commuted value is extinguished (subsection 72(2) of the PBA). In this case, the default option is a pension payable from the pension plan.





## Computation Dates

Subsections 19(1) and 29(2) of the Regulation specify the method of determining a commuted value for the purposes of section 42 and subsection 73(2) of the PBA. The commuted value of the pension benefit may not be less than the value determined in accordance with the Recommendations issued by the Canadian Institute of Actuaries and effective September 1, 1993.

According to Section 2(C) of the Recommendations, the transfer value should be computed as of the date the beneficiary becomes entitled to a deferred pension. For a transfer under subsection 42(1) of the PBA, this entitlement occurs on the date of termination. Where a person exercises his or her entitlement under subsection 73(2) of the PBA, subsection 29(2) of the Regulation requires the commuted value to be determined as of the date of the wind-up.

When a pension plan provides portability entitlements for terminating members who are entitled to an immediate pension, the computation date will be the date of termination.

When a plan provides or is amended to provide portability entitlements for deferred vested members who previously either had no statutory or plan rights or did not make a transfer election within the prescribed period, the computation date will be the date the transfer value is determined in accordance with the plan provisions.

## Interest Accrual

Transfer values calculated under subsections 19(1) and 29(2) of the Regulation, where a member has a mandatory right to make a portability election within a prescribed period, should not be recomputed when the transfer occurs after the computation date. These values, however, may be subject to interest

adjustment as prescribed in subsections 24(11.1) and 24(12) of the Regulation.

When a commuted value is calculated for the purposes of section 42 of the PBA and time has elapsed between the date of termination and the date of payment, subsection 24(11.1) of the Regulation requires that interest at the rate used to calculate the commuted value at the date of termination be credited from the date of termination to the beginning of the month in which the payment is made.

When a plan administrator fails to provide a written termination statement within the prescribed period, no downward adjustment of the commuted value plus interest is permitted. At the date the transfer is made from the pension plan, the amount transferred with respect to an individual should not be less than the commuted value computed as at the individual's date of termination, plus interest credited at the rate and over the period indicated above.

In accordance with subsection 24(12) of the Regulation, if an individual makes an election under subsection 73(2) of the PBA to transfer a pension benefit, the commuted value of the pension benefit shall accumulate interest at the same rate used to calculate the commuted value of the pension benefit in the wind-up report. This interest shall accumulate from the effective date of the wind-up to the beginning of the month in which the payment is made.



## **SUPERINTENDENT OF FINANCIAL SERVICES**

### **Appointment of Administrators – Section 71 of the PBA**

1. Mackenzie Financial Corporation, as the Administrator of the Pension Plan for the Employees of Genicom Canada Inc. (Registration No. 924829) effective immediately.

DATED at Toronto, Ontario, this 14th day of March, 2001.

## Notices of Proposal to Make an Order

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **AM International Inc. Pension Plan (1979), Registration No. 0202044;**

**TO:** **PricewaterhouseCoopers Inc.**  
c/o Aylesworth Thompson  
Phelan O'Brien LLP  
P.O. Box 15 Suite 3000  
Royal Bank Plaza, South Tower  
Toronto, ON  
M5J 2J1

Attention: Peter R. Welsh  
**Applicant**

### Notice of Proposal

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment, out of the AM International Inc. Pension Plan (1979), Registration No.0202044 (the "Plan"), to PricewaterhouseCoopers Inc. in the amount of \$1,506,541 as at August 31, 2000 plus interest earnings to the date of payment.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. The Applicant is the Trustee in Bankruptcy of AM International Inc. (the Employer as defined in the Plan).

2. The Plan was wound up, effective October 17, 1996.
3. As at August 31, 2000, the surplus in the Plan was estimated at \$5,478,331 (net of expenses).
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Applicant, and 89% of the active members and 89% of the former members and other persons entitled to payments, the surplus in the Plan as at August 31, 2000 plus interest earning to the date of payment, is to be distributed:
  - a) 27.5% to the Employer; and
  - b) 72.5% to the beneficiaries of the Plan as defined in the Surplus Sharing Agreement.
6. The Applicant has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 27.5% of the surplus as at August 31, 2000 plus investment earnings to the date of payment.
7. The application appears to comply with section 78 and subsection 79(3) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the

Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 8th day of March, 2001.

Dina Palozzi

Superintendent of Financial Services

cc: Marcel Theroux, William M. Mercer Limited

cc: Susan Rowland, Andrew Hatnay,  
Koskie Minsky

cc: Brendan Murphy

NOTE – PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P.8, as amended,  
respecting the **Registered Pension Plan for  
Salaried (Non-Union) Employees of JPE  
Canada Inc., Registration No. 1038330;**

**TO: Clarica Life Insurance  
Company**

227 King Street South  
P.O. Box 1601  
Waterloo, ON  
N2J 4C5

Attention: Terri-Lynn Moser  
Finals Associate  
**Administrator**

**AND TO: JPE Canada Inc.**  
775 Technology Drive  
P.O. Box 660  
Peterborough, ON  
K9J 6Z8

Attention: D.L. Bacon  
Secretary  
**Employer**

### **Notice of Proposal to Make an Order**

**I PROPOSE TO ORDER** that the Registered  
Pension Plan for Salaried (Non-Union)  
Employees of JPE Canada Inc., Registration No.  
1038330, be wound up in whole effective  
February 28, 1999.

I propose to make this order pursuant to  
subsection 69(1) of the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "*Act*").

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension of  
employer contributions to the pension fund.
2. The employer is bankrupt within the  
meaning of the *Bankruptcy and Insolvency Act*  
(*Canada*), R.S. 1985, c. B-3, as amended.
3. A significant number of members of the Plan  
ceased to be employed by the employer as a  
result of the discontinuance of all or part of  
the business of the employer or as a result of  
the reorganization of the business of the  
employer.

**YOU ARE ENTITLED TO A HEARING** by  
the Financial Services Tribunal (the "Tribunal")  
pursuant to subsection 89(6) of the *Act* if,  
within thirty (30) days after this Notice of  
Proposal is served<sup>1</sup> on you, you deliver to the  
Tribunal a written notice that you require a  
hearing.

Your written notice requiring a hearing shall be  
delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE  
TRIBUNAL, WITHIN THIRTY (30) DAYS  
FROM THE DATE THIS NOTICE OF  
PROPOSAL IS SERVED ON YOU, A  
WRITTEN NOTICE THAT YOU REQUIRE  
A HEARING, I MAY MAKE THE ORDER  
PROPOSED HEREIN.**

**THE ADMINISTRATOR IS REQUIRED**  
pursuant to subsection 89(5) of the *Act*, to  
transmit a copy of this Notice of Proposal to  
Make an Order to the following persons:

**Grant Thornton Limited**

Royal Bank Plaza  
200 Bay Street, 19th Floor  
P.O. Box 55  
Toronto, ON  
M5J 2P9

Attention: Allan Rutman

**Interim Receiver and Trustee  
in Bankruptcy for JPE  
Canada Inc.**

DATED at Toronto, Ontario, this 20th day of  
March, 2001.

Dina Palozzi

Superintendent of Financial Services

NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Retirement Plan for the Employees of Gas Technology Canada, Registration No. 1040336**;

**TO:** **Gas Technology Canada**  
243 Consumers Road, Suite 1200  
North York, ON  
M2J 5E2

Attention: Dr. Inge Hansson  
President  
**Applicant and Employer**

### Notice of Proposal

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment, out of the Retirement Plan for the Employees of Gas Technology Canada, Registration No.1040336 (the "Plan"), to Gas Technology Canada in the amount of approximately \$6,300 as at August 21, 1998, plus investment earnings thereon to the date of payment.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Gas Technology Canada is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective August 21, 1998.
3. As at August 21, 1998, the surplus in the Plan was estimated at \$29,200.

4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
  5. The application discloses that by written agreement made by the Employer, and 100% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses, is to be distributed, approximately:
    - a) 25% to the Employer; and
    - b) 75% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
  6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of approximately \$6,300 as at August 21, 1998, plus investment earnings thereon to the date of payment. This amount represents the surplus remaining after the distribution of 78% of the surplus to the members and former members.
  7. The application appears to comply with section 78 and subsection 79(3) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
  8. Such further and other reasons as come to my attention.
- YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 19th day of March, 2000.

Dina Palozzi

Superintendent of Financial Services

cc: Mr. Robert R. Coyle, The Standard Life  
Assurance Company

\*NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(4) of the *Act* consenting to a payment out of the **Dibrell Brothers of Canada Pension Plan for Local 341-T Employees, Registration No. C-18014**;

**TO:** **DIMON Incorporated**  
512 Bridge Street  
Danville, Virginia  
24543-0681  
U.S.A.

Attention: John O. Hunnicutt III  
Vice President, Administration  
**Applicant and Employer**

### Notice of Proposal

**I PROPOSE TO MAKE AN ORDER** under s. 78(4) of the *Act*, consenting to the payment out of the Dibrell Brothers of Canada Ltd. Pension Plan for Local 341-T Employees, Registration No.C-18014 (the "*Plan*"), to DIMON Incorporated in the amount of \$42,000 plus interest at the fund rate of return since the dates of payment of the Plan's wind up expenses.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. DIMON Incorporated is the successor to Dibrell Brothers of Canada Ltd., the employer as defined in the Plan (the "*Employer*").

2. The Plan was wound up, effective December 31, 1988.
3. Expenses of the wind up of the Plan amounting to \$42,000 were paid for directly by the Employer.
4. The Plan was in surplus at its wind up. The affected employees received their basic benefits and certain benefit enhancements in 1991/92. As of August 31, 1999, \$64,000 remained in the Plan. The Employer proposes to distribute the assets remaining, after it receives reimbursement for its expenses, to members and former members of the Plan.
5. The Plan provides that plan expenses are to be paid from the plan funds.
6. The Employer asserts that the wind up expenses were reasonable and properly incurred.
7. The Employer has applied, pursuant to subsection 78(4) of the *Act* for consent of the Superintendent of Financial Services to the payment of \$42,000 (after adding investment earnings).
8. The application appears to comply with subsection 78(4) of the *Act*.
9. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "*Tribunal*") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.



Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 17th day of May, 2001.

Dina Palozzi

Superintendent of Financial Services

cc: Priscilla Healy, Towers Perrin

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(4) of the *Act* consenting to a payment out of the **Dibrell Dibrell Brothers of Canada Pension Plan for Non-Union Employees, Registration No. C-18015**;

**TO:** **DIMON Incorporated**  
512 Bridge Street  
Danville, Virginia  
24543-0681  
U.S.A.

Attention: John O. Hunnicutt III  
Vice President, Administration  
**Applicant and Employer**

### Notice of Proposal

**I PROPOSE TO MAKE AN ORDER** under s. 78(4) of the *Act*, consenting to the payment, out of the Dibrell Brothers of Canada Ltd. Pension Plan for Non-Union Employees, Registration No.C-18015 (the "Plan"), to DIMON Incorporated in the amount of \$51,000 plus interest at the fund rate of return since the dates of payment of the Plan's wind up expenses.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. DIMON Incorporated is the successor to Dibrell Brothers of Canada Ltd., the employer as defined in the Plan (the "Employer").

2. The Plan was wound up, effective June 30, 1989.
3. Expenses of the wind up of the Plan amounting to \$39,000, and additional expenses of the wind up of the fund estimated at \$12,000 have been and will be incurred. Most have been paid for directly by the Employer.
4. The Plan was in surplus at its wind up. The affected employees received their basic benefits and certain benefit enhancements in 1991/92. As of August 31, 1999, \$134,000 remained in the Plan. The Employer proposes to distribute the assets remaining, after it receives reimbursement for its expenses, to members and former members of the Plan.
5. The Plan provides that plan expenses are to be paid from the plan funds.
6. The Employer asserts that the wind up expenses were reasonable and properly incurred.
7. The Employer has applied, pursuant to subsection 78(4) of the *Act* for consent of the Superintendent of Financial Services to the payment of \$51,000 (after adding investment earnings).
8. The application appears to comply with subsection 78(4) of the *Act*.
9. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 17th day of May, 2001.

Dina Palozzi

Superintendent of Financial Services

cc: Priscilla Healy, Towers Perrin

NOTE – PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the “Act”);

**AND IN THE MATTER OF** the Actuarial Report on the Partial Wind Up submitted by Cooper Industries (Canada) Inc. to the Superintendent of Financial Services respecting the **Retirement Plan for Salaried Employees of Cooper Canada – Plan A, Registration No. 240622;**

**TO:** **Cooper Industries (Canada) Incorporated**  
P.O. Box 4446  
Houston, Texas,  
U.S.A. 77210

Attention: Mr. Stephen O'Neill  
Director, Employee Benefits  
**Employer and Administrator  
of the Plan**

**Notice of Proposal to Refuse to Approve Partial Wind up Report and to Make an Order under Section 87 of The Act**

**I PROPOSE**, pursuant to subsection 70(5) of the Act, **TO REFUSE TO APPROVE** the Actuarial Report (the “Report”) prepared in November 1999, in relation to the partial wind up of the Retirement Plan for Salaried Employees of Cooper Canada – Plan A, Registration No. 240622 ( the “Plan”) as at March 30, 1992.

**I FURTHER PROPOSE**, pursuant to section 87 of the Act, **TO MAKE AN ORDER** requiring the Employer to refrain from using and to preserve for distribution that portion of the surplus assets in the Plan, plus any

investment earnings thereon, attributable to the Port Hope location.

**I PROPOSE TO REFUSE TO APPROVE THE REPORT FOR THE FOLLOWING REASONS:**

1. The Report does not meet the requirements of the Act and the Regulations and does not protect the interests of the members or former members of the Plan.
2. Cooper Industries (Canada) Inc. (“Cooper”) went through a corporate reorganization during 1992, including the closure of its manufacturing facility in Port Hope, Ontario, effective March 30, 1992.
3. Cooper declared a full wind up of its Pension Plan for Bargaining and Non Bargaining Employees employed at the Port Hope facility, but refused to declare a partial wind up of the Plan (for Salaried Employees) in respect of the members affected by the reorganization and closure at Port Hope.
4. On July 2, 1998, the Superintendent of Financial Services (the “Superintendent”) issued a Notice of Proposal to make an Order requiring the partial wind up of the Plan. After initially opposing the Order, Cooper withdrew its objection on March 3, 1999, and agreed to partially wind up the Plan, if ordered to do so by the Superintendent.
5. On June 22, 1999, the Superintendent issued an Order requiring Cooper to partially wind up the Plan.
6. On November 10, 1999, Cooper filed the Report for partial wind up of the Plan as at March 30, 1992.

7. The Report reflects the fact that the Plan was formerly a contributory defined benefit plan. In September 1989 the Plan was restated and converted from a defined benefit to a defined contribution plan. In 1989, at the time of the conversion, the Plan had a surplus.
8. Cooper set aside the Plan's surplus assets in a "Separate Account" which was dealt with and invested separately from the members' individual defined contribution accounts. Although financial asset information was shown separately for the Port Hope location until 1989, starting in June 1989, all surplus assets were commingled in the Separate Account.
9. Since the Canada Customs and Revenue Agency (formerly Revenue Canada) rules prevent the accumulation of surplus in defined contribution plans, Cooper applied the surplus in the Separate Account towards current service contributions for its continuing membership.
10. At the time of the partial wind up, 39 members in Port Hope were participating in the Plan ("the affected members"). Eighteen of the affected members had joined the Plan after September 1, 1989 and so had accrued benefits only on a defined contribution basis.
11. According to the Report, on September 1, 1989, the surplus assets in the Separate Account were valued at \$9,897,306. As of the wind up date of March 30, 1992, the Report showed the surplus assets attributable to the Port Hope location were worth \$1,094,614. This value is based on estimates calculated by prorating total Plan assets to the liabilities attributable, at that time, to the Port Hope members and former members.
12. Report attributes \$458,683 of the Port Hope location surplus assets to the affected member of the Plan who joined before September 1989. The report fails to attribute the remainder of the Port Hope surplus assets.
13. The Report fails to demonstrate that Cooper has any interest in or entitlement to the assets in the Separate Account or to the Port Hope location surplus assets.
14. The Report indicates (at p. 6) that Cooper "intends to retain the Separate Account Assets in the Plan's fund as at March 30, 1992 and to continue allocating the monies toward future current service contributions for its continuing membership."
15. The Report fails to provide for the distribution of the Port Hope location surplus assets, as required by the *Act*. Partial wind up is defined under the *Act* as "the termination of part of a pension plan and the distribution of the assets related to that part of the pension plan."
16. Section 70(6) of the *Act* provides that "on the partial wind up of a pension plan, members, former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits on the full wind up of a pension plan on the effective date of the partial wind up."
17. Subsection 70(5) of the *Act* states that the Superintendent may refuse to approve a wind up report that does not meet the requirements of the *Act* and the regulations or that does not protect the interests of the members and former members of the pension plan.



18. Such further and other reasons as may come to my attention.

**I PROPOSE TO MAKE AN ORDER** under Section 87 of the *Act*, requiring the Employer to refrain from using and to preserve for distribution that portion of the surplus assets in the Plan, plus any investment earnings thereon, attributable to the Port Hope location **FOR THE FOLLOWING REASONS:**

1. The Report states that Cooper is and has been since 1989 utilizing the surplus assets in the Separate Account for ongoing current service contributions. As indicated above, the Report also states that Cooper plans to continue to retain all the surplus in its Separate Account and to allocate it to ongoing current service contributions.
2. Cooper has failed to separately account for and preserve for distribution on wind up the surplus assets attributable to the Port Hope location.
3. Section 70(6) of the *Act* provides that "on the partial wind up of a pension plan, members, former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits on the full wind up of a pension plan on the effective date of the partial wind up."
4. Section 87(1)(a) of the *Act* provides that the Superintendent may make an order if the Superintendent is of the opinion, upon reasonable or probable grounds, that the pension plan or fund is not being administered in accordance with the *Act* or regulations.

5. Section 87(1)(c) of the *Act* provides that the Superintendent may make an order if the Superintendent is of the opinion, upon reasonable or probable grounds, that administrator of the pension plan or the employer is contravening a requirement of the *Act* or the regulations.

6. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the *Act* if, within thirty (30) days after the Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I WILL MAKE THE ORDERS PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 8th day of March, 2001.

Dina Palozzi  
Superintendent of Financial Services  
21161

<sup>1</sup>NOTE - PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order Requiring the Wind Up of the **Pension Plan for the Employees of Dyment Limited, Registration No. 0242735;**

**AND IN THE MATTER OF** the Actuarial Report on the Partial Wind Up submitted by Dyment Limited to the Superintendent of Financial Services respecting the **Pension Plan for the Employees of Dyment Limited, Registration No. 0242735**  
**Registration No. 240622;**

**TO: Dyment Limited**  
Suite 400, 1235 Bay Street  
Toronto, ON  
M5R 3K4

Attention: Elmer A. Campbell  
Controller  
**Employer and Administrator  
of the Pension Plan for the  
Employees of Dyment  
Limited**

### Notice of Proposal to Make an Order

**I PROPOSE TO ORDER**, pursuant to subsection 69(1) of the *Act*, that the Pension Plan for the Employees of Dyment Limited, Registration Number 0242735 (the "Plan") be wound up in full effective August 23, 1996.

**I FURTHER PROPOSE**, pursuant to subsection 70(5) of the *Act*, **TO REFUSE TO APPROVE** the Actuarial Report (the "Report") prepared in April 1997, in relation to the partial wind up of the Plan as at August 23, 1996.

### **I PROPOSE TO MAKE THE ORDER REQUIRING THE PLAN TO BE WOUND UP IN FULL FOR THE FOLLOWING REASONS:**

1. Dyment Limited ("Dyment"), is the employer and the administrator of the Plan, which is a contributory defined benefit plan.
2. On April 9, 1996, Dyment sold its "Display Division" to Chesapeake Display and Packaging (Canada) Limited ("Chesapeake"). As a result of this sale, 76 then-active members of the Plan became employees of Chesapeake, and their membership in the Plan was terminated.
3. The employees transferred to Chesapeake became members of Chesapeake's plan and Chesapeake assumed responsibility for their pension benefits. That portion of the assets in the Plan (exclusive of surplus) attributable to the 76 former members was transferred to the Chesapeake plan.
4. Dyment sold its remaining operations to DDS Dyment Distribution Services Ltd. ("DDS") effective August 23, 1996. All 56 of the remaining active Plan members became employees of DDS. Since DDS had no pension plan, Dyment proposed to partially wind up the Plan in respect of the members transferred to DDS.
5. As of August 23, 1996, there were no remaining active members in the Plan and Dyment was no longer required to make contributions to the pension fund.
6. Under paragraph 69(1)(a) of the *Act* the Superintendent of Financial Services (the "Superintendent") may require the wind up of a pension plan if there is a cessation or suspension of employer contributions.



7. Under paragraph 69(1)(d) of the *Act* the Superintendent may require the wind up of a pension plan where a significant number of the members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
8. Under paragraph 69(1)(e) of the *Act* the Superintendent may require the wind up of a pension plan where all or a significant portion of the business carried on by an employer at a specific location is discontinued.
9. Under paragraph 69(1)(f) of the *Act* the Superintendent may require the wind up of a pension plan where all or part of the employer's business or all or part of the assets of the employer's business are sold, assigned or otherwise disposed of and the person who acquires the business or assets does not provide a pension plan for the members of the employer's pension plan who become employees of the person.
10. Such further and other reasons as may come to my attention.

**I PROPOSE**, pursuant to subsection 70(5) of the *Act*, **TO REFUSE TO APPROVE** the Actuarial Report (the "Report") prepared in April 1997, in relation to the partial wind up of the Plan as at August 23, 1996, **FOR THE FOLLOWING REASONS:**

1. The Report does not meet the requirements of the *Act* and the Regulations and does not protect the interests of the members or former members of the Plan.

2. In April 1997, Dyment filed the Report for partial wind up of the plan as at August 23, 1996.
3. The Report reflects the fact that as of August 23, 1996, the Plan had surplus assets estimated at \$2,236,222.
4. The Report fails to provide for the distribution of the surplus assets, related to the partial wind up group, as required by the *Act*. Partial wind up is defined under the *Act* as "the termination of part of a pension plan and the distribution of the assets related to that part of the pension plan."
5. Section 70(6) of the *Act* provides that "on the partial wind up of a pension plan, members, former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits on the full wind up of a pension plan on the effective date of the partial wind up."
6. Subsection 70(5) of the *Act* states that the Superintendent may refuse to approve a wind up report that does not meet the requirements of the *Act* and the regulations or that does not protect the interests of the members and former members of the pension plan.
7. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the *Act* if, within thirty (30) days after the Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.



Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I WILL MAKE THE ORDERS PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 19th day of March, 2001.

Dina Palozzi  
Superintendent of Financial Services  
21745

\*NOTE – PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the “Act”);

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under section 69 of the *Act* respecting the **Goodyear Contributory Pension Plan, Registration No. 0337766** (the “Plan”);

**TO:** **Goodyear Canada Inc.**  
450 Kipling Avenue  
Etobicoke, ON  
M8Z 5E1

Attention: Mr. Dan Maraldo  
Manager, Benefit Administration  
**Employer and Administrator**

### **Notice of Proposal to Make an Order**

**I PROPOSE TO ORDER** that the Plan be wound up in part in relation to those members and former members of the Plan who ceased to be employed by Goodyear Canada Inc. (the “Employer”) between December 1, 1995, and January 10, 1998, or the last date of employment of a Plan member employed by the Employer at an Ontario location that was closed or divested during that period, whichever is later, as a result of the discontinuance of all or a significant portion of the business carried on by the Employer at a number of specific locations.

**I PROPOSE** to make this order pursuant to paragraphs 69(1)(e) and (f) of the *Act*.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

I. Goodyear Canada Inc. is the employer and administrator of the Plan.

2. All or a significant portion of the business carried on by the Employer at a number of specific locations was discontinued between December 1, 1995, and January 10, 1998, under paragraph 69(1)(e) of the *Act*.
3. Part of the Employer's business or part of the assets of the Employer's business were sold, assigned or otherwise disposed of and the person or persons who acquired the business or assets or a part thereof have not provided a pension plan for the former members of the Employer's plan who became employees of the person or persons who acquired the business or assets or a part thereof, under paragraph 69(1)(f) of the *Act*.
4. Such further and other reasons that may come to my attention.

**YOU ARE ENTITLED** to a hearing by the Financial Services Tribunal (the “Tribunal”) pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**THE ADMINISTRATOR IS REQUIRED,**

pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons: all members and former members of the Plan who were employed by the Employer and who ceased to be employed by the Employer between December 1, 1995 and January 10, 1998 or the last date of employment of a Plan member employed at an Ontario location that was closed or divested during that period, whichever is later, as a result of the discontinuance of all or a significant portion of the business carried on by the Employer at a number of specific locations.

DATED at Toronto, Ontario, this 24th day of April, 2001.

Dina Palozzi

Superintendent of Financial Services

\*NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** an application for consent of the Superintendent of Financial Services to the transfer of assets under section 81 of the *Act* from the **Crown Cork & Seal Canada Inc. Pension Plan for Salaried Employees, Registration No. 0474205** and The **Pension Plan for Clerical Employees of Crown Cork & Seal Canada Inc., Registration Number 0595371** into the **Crown Cork & Seal Canada Inc. Pension Plan for Employees, Registration No. 0338491**;

**TO: Crown Cork & Seal Canada Incorporated**

7900 Keele Street  
Concord, ON  
L4K 2A3

Attention: A.J. Packman  
Director Compensation and  
Employees Benefits  
**Employer and Administrator  
of the Crown Cork & Seal  
Canada Inc. Pension Plan for  
Employees, the Crown Cork &  
Seal Canada Inc. Pension  
Plan for Salaried Employees  
and the Pension Plan for  
Clerical Employees of Crown  
Cork & Seal Canada Inc.**

### Notice of Proposal

**I PROPOSE TO REFUSE TO CONSENT** to a transfer of assets proposed by Crown Cork & Seal Canada Inc. from the Crown Cork & Seal Canada Inc. Pension Plan for Salaried

Employees, Registration No. 0474205 ("Salaried Plan") and the Pension Plan for Clerical Employees of Crown Cork & Seal Canada Inc., Registration No. 0595371 ("Clerical Plan") into the Crown Cork & Seal Canada Inc. Pension Plan for Employees, Registration No. 338491 ("Employees' Plan").

### **I PROPOSE TO REFUSE TO CONSENT FOR THE FOLLOWING REASONS:**

1. Crown Cork & Seal Canada Inc. ("CCS") is the employer and administrator of the Salaried Plan, the Clerical Plan and the Employees' Plan.
2. In December 1997, CCS applied for a consent to the transfer of assets from the Salaried Plan and the Clerical Plan to the Employees' Plan, effective January 1, 1997. This would result in the merger of the three plans.
3. Appendix A to the actuarial report submitted in support of the application state that at the effective date of the merger, the Employees' Plan had 232 active members, 107 former members, a solvency surplus of \$3,845,000 and a transfer ratio of 1.28.
4. Appendix B to the actuarial report submitted in support of the application state that at the effective date of the merger, the Salaried Plan had 113 active members, 224 former members, a solvency deficit of \$8,687,000 and a transfer ratio of .82.
5. Appendix C to the actuarial report submitted in support of the application state that at the effective date of the merger, the Clerical Plan had six active members, nine former members, a solvency surplus of \$41,000 and a transfer ratio of 1.14.

6. The actuarial report submitted in support of the merger application state that immediately after the merger, the merged plan will have a solvency deficit of \$4,801,000 and a transfer ratio of 0.92.
7. The asset transfer does not protect the pension benefits and other benefits of the members and former members of the Employees' Plan under subsection 81(5) of the *Act*. Since the transfer ratio of the merged (importing) plan is less than the highest transfer ratio of one of the exporting plans, the Employees' Plan, and is less than 1.0, the benefits of the plan members are not protected.
8. The asset transfer does not protect the pension benefits and other benefits of the members and former members of the Clerical Plan under subsection 81(5) of the *Act*. Since the transfer ratio of the merged (importing) plan is less than the highest transfer ratio of one of the exporting plans, the Clerical Plan, and is less than 1.0, the benefits of the plan members are not protected.
9. The asset transfer does not satisfy the requirements of section 11 of the Financial Services Commission of Ontario's Policy Bulletin A700-251. The Bulletin, at section 11, provides that the Superintendent may decide that benefits are not protected where:
  - (a) the transfer ratio of the importing plan is less than the highest transfer ratio of the exporting plans, and is less than 1.0; or
  - (b) the report for the importing plan indicates that special payments are required, and any scheduled amount of monthly amortization of payment for the importing plan is less than the sum of the corresponding scheduled amounts of monthly special payments required for the exporting plans.
10. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 29th day of May, 2001.

Dina Palozzi  
Superintendent of Financial Services

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8., as amended (the "*Act*");

**AND IN THE MATTER OF** a Partial Wind Up Report submitted by CBS Canada Inc. to the Superintendent of Financial Services respecting the **Westinghouse Canada Inc. Pension Plan, Registration No. 348409** (the "*Plan*");

**TO:** **CBS Canada Inc.**  
11 Stanwix Street  
Pittsburgh, Pennsylvania  
15222-1384  
USA

Attention: Julie Forsythe  
**Administrator and Employer**

**Notice of Proposal to Refuse to Approve a Partial Wind Up Report**

**I PROPOSE**, pursuant to subsection 70(5) of the *Act*, **TO REFUSE TO APPROVE** the Partial Wind Up Report (the "*Report*"), prepared by William M. Mercer Limited for the Westinghouse Canada Inc. Pension Plan, Registration No. 348409 (the "*Plan*"), as at August 11, 1994, in respect of the business carried on by Westinghouse at its Burlington, Ontario plant.

**I PROPOSE TO REFUSE TO APPROVE THE REPORT FOR THE FOLLOWING REASONS:**

1. CBS Canada Inc., formerly Westinghouse Canada Inc. ("*Westinghouse*"), is the employer and administrator of the Plan.
2. In May 1999, the Superintendent ordered the Plan partially wound up effective August 11, 1994, in respect of the business carried on at the employer's Burlington, Ontario plant.

3. Westinghouse filed the Report in March 2000.
4. Section 6.04 of the Plan provides for early retirement benefits at the request of plan participants ("employee request early retirement benefits"), at any time after participants have attained 55 years of age.
5. Section 6.05 of the Plan provides for early retirement benefits at the request of the employer, ("employer request early retirement benefits") at any time after participants have attained 58 years of age. These benefits are more financially advantageous to retired employees than section 6.04 benefits.
6. Section 7.04 of the Plan provides for a "bridge benefit" to members retiring before they become eligible to receive an Old Age Security pension. Such benefits are available to any member who retires early at the request of the employer, but are only available to members who retire early at their own request after attaining 62 years of age.
7. Section 74 of the *Act* provides certain benefits to plan members whose combination of age and continuous employment or membership in the plan equals at least 55, upon the wind up of a pension plan. These members may receive a pension in accordance with the terms of the plan, and where the consent of the employer is a requirement for eligibility for an ancillary benefit, under subsection 74(7) the employer is deemed to have given that consent.
8. Pursuant to section 74 of the *Act*, and pursuant to the terms of the Plan, those members of the Plan whose combination of age plus years of continuous employment or membership in the Plan equalled at least 55 at the effective date of the wind up have



a right to receive a pension in accordance with sections 6.05 ("employer request early retirement benefits") and 7.04 ("bridge benefits") of the Plan, beginning at the date they would have reached age 55 with 10 years of service had the Plan not been wound up.

9. The Report provides benefits under section 6.05 ("employer request early retirement benefits") and 7.04 ("bridge benefits") to those members who were at least 55 years and had at least 10 years of service at the date of wind up. The Report fails to provide these benefits to other members whose combination of age plus years of service equalled at least 55 at the effective date of the wind up.
10. The Report provides only section 6.04 ("employee request early retirement benefits") to members whose combination of age plus years of service equalled at least 55 at the effective date of the wind up.
11. The Report identifies \$79,426 in surplus assets related to the partial wind up group, as at April 30, 1995. The surplus calculated as of January 1, 2000, amounts to \$113,327.
12. The Report indicates (at p. 19) that after the settlement of basic benefits has been completed, any excess assets shall be retained in the Plan.
13. The Report fails to provide for the distribution of the surplus assets related to the partial wind up group, as required by the *Act*. Partial wind up is defined under the *Act* as "the termination of part of a pension plan and the distribution of the assets related to that part of the pension plan."
14. Subsection 70(6) of the *Act* states that "on the partial wind up of a pension plan, members, former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits on the full wind up of a pension plan on the effective date of the partial wind up."
15. As a result, the Report does not meet the requirements of the *Act* and regulations and does not protect the interests of the members and former members of the pension plan.
16. Subsection 70(5) of the *Act* states that the Superintendent may refuse to approve a wind up report that does not meet the requirements of the *Act* and the regulations or that does not protect the interests of the members and former members of the pension plan.
17. Such further and other reasons as may come to my attention.

#### **YOU ARE ENTITLED TO A HEARING**

before the Financial Services Tribunal (the "Tribunal") if you deliver to the Tribunal written notice that you require a hearing, within thirty (30) days after this Notice of Proposal to Refuse to Consent is served<sup>1</sup> on you.

Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar





**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 9th day of May, 2001.

Dina Palozzi

Superintendent of Financial Services

NOTE – PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8., as amended (the "*Act*");

**AND IN THE MATTER OF** a Partial Wind Up Report submitted by CBS Canada Inc. to the Superintendent of Financial Services respecting the **Westinghouse Canada Inc. Pension Plan, Registration No. 348409** (the "*Plan*");

**TO:** **CBS Canada Inc.**  
11 Stanwix Street  
Pittsburgh, Pennsylvania  
15222-1384  
USA

Attention: Julie Forsythe  
**Administrator and Employer**

### **Notice of Proposal to Refuse to Approve a Partial Wind Up Report**

**I PROPOSE**, pursuant to subsection 70(5) of the *Act*, **TO REFUSE TO APPROVE** the Partial Wind Up Report (the "*Report*"), prepared by William M. Mercer Limited for the Westinghouse Canada Inc. Pension Plan, Registration No. 348409 (the "*Plan*"), as at June 30, 1991, in respect of the business carried on by Westinghouse at its Beach Road plant in Hamilton, Ontario.

### **I PROPOSE TO REFUSE TO APPROVE THE REPORT FOR THE FOLLOWING REASONS:**

1. CBS Canada Inc., formerly Westinghouse Canada Inc. ("Westinghouse"), is the employer and administrator of the Plan.
2. In May 1999, the Superintendent ordered the Plan partially wound up effective June 30, 1991, in respect of the business carried on at the employer's Beach Road plant in Hamilton, Ontario.
3. Westinghouse filed the Report in March 2000.
4. Section 6.04 of the Plan provides for early retirement benefits at the request of plan participants ("employee request early retirement benefits"), at any time after participants have attained 55 years of age.
5. Section 6.05 of the Plan provides for early retirement benefits at the request of the employer, ("employer request early retirement benefits") at any time after participants have attained 58 years of age. These benefits are more financially advantageous to retired employees than are section 6.04 benefits.
6. Section 7.04 of the Plan provides for a "bridge benefit" to members retiring before they become eligible to receive an Old Age Security pension. Such benefits are available to any member who retires early at the request of the employer, but are only available to members who retire early at their own request after attaining 62 years of age.
7. Section 74 of the *Act* provides certain benefits to plan members whose combination of age and continuous employment or membership in the plan equals at least 55, upon the wind up of a pension plan. These members may receive a pension in accordance with the terms of the plan, and where the consent of the employer is a requirement for eligibility for an ancillary benefit, under subsection 74(7) the employer is deemed to have given that consent.
8. Pursuant to section 74 of the *Act*, and pursuant to the terms of the Plan, those members of the Plan whose combination of age plus years of continuous employment or membership in the Plan equalled at least



- 55 at the effective date of the wind up have a right to receive a pension in accordance with sections 6.05 ("employer request early retirement benefits") and 7.04 ("bridge benefits") of the Plan, beginning at the date they would have reached age 55 with 10 years of service had the Plan not been wound up.
9. The Report provides benefits under section 6.05 ("employer request early retirement benefits") and 7.04 ("bridge benefits") to those members who were at least 55 years and had at least 10 years of service at the date of wind up. The Report fails to provide these benefits to other members whose combination of age plus years of service equalled at least 55 at the effective date of the wind up.
10. The Report provides only section 6.04 ("early retirement employee request benefits") to members whose combination of age plus years of service equalled at least 55 at the effective date of the wind up.
11. The Report identifies \$38,969 in surplus assets related to the partial wind up group, as of December 31, 1992. The surplus calculated as of January 1, 2000, amounts to \$1,007,911.
12. The Report indicates (at p. 21) that after the settlement of basic benefits has been completed, any excess assets shall be retained in the Plan.
13. The Report fails to provide for the distribution of the surplus assets related to the partial wind up group, as required by the Act. Partial wind up is defined under the Act as "the termination of part of a pension plan and the distribution of the assets related to that part of the pension plan."
14. Subsection 70(6) of the Act states that "on the partial wind up of a pension plan, members former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits on the full wind up of a pension plan on the effective date of the partial wind up."
15. As a result, the Report does not meet the requirements of the Act and regulations and does not protect the interests of the members and former members of the pension plan.
16. Subsection 70(5) of the Act states that the Superintendent may refuse to approve a wind up report that does not meet the requirements of the Act and the regulations or that does not protect the interests of the members and former members of the pension plan.
17. Such further and other reasons as may come to my attention.
- YOU ARE ENTITLED TO A HEARING** before the Financial Services Tribunal (the "Tribunal"), if you deliver to the Tribunal written notice that you require a hearing, within thirty (30) days after this Notice of Proposal to Refuse to Consent is served<sup>1</sup> on you.
- Your written notice requiring a hearing shall be delivered to:
- Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9
- Attention:** The Registrar



**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 9th day of May, 2001.

Dina Palozzi

Superintendent of Financial Services

NOTE - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8., as amended (the "*Act*");

**AND IN THE MATTER OF** a Partial Wind Up Report submitted by CBS Canada Inc. to the Superintendent of Financial Services respecting the **Westinghouse Canada Inc. Pension Plan, Registration No. 348409** (the "*Plan*");

**TO:** **CBS Canada Inc.**  
11 Stanwix Street  
Pittsburgh, Pennsylvania  
15222-1384  
USA

Attention: Julie Forsythe  
**Administrator and Employer**

### **Notice of Proposal to Refuse to Approve a Partial Wind Up Report**

**I PROPOSE**, pursuant to subsection 70(5) of the *Act*, **TO REFUSE TO APPROVE** the Partial Wind Up Report (the "*Report*"), prepared by William M. Mercer Limited for the Westinghouse Canada Inc. Pension Plan, Registration No. 348409 (the "*Plan*"), as at April 30, 1995, in respect of the business carried on by Westinghouse at its Motors Division plant.

### **I PROPOSE TO REFUSE TO APPROVE THE REPORT FOR THE FOLLOWING REASONS:**

1. CBS Canada Co., formerly Westinghouse Canada Inc. ("*Westinghouse*"), is the employer and administrator of the Plan.
2. The Plan was partially wound up as a result of the plant closedown of the Westinghouse Motors Division in April 1995.
3. Westinghouse filed the Report in August 1996.

4. Section 6.04 of the Plan provides for early retirement benefits at the request of plan participants ("employee request early retirement benefits"), at any time after participants have attained 55 years of age.
5. Section 6.05 of the Plan provides for early retirement benefits at the request of the employer, ("employer request early retirement benefits") at any time after participants have attained 58 years of age. These benefits are more financially advantageous to retired employees than are section 6.04 benefits.
6. Section 7.04 of the Plan provides for a "bridge benefit" to members retiring before they become eligible to receive an Old Age Security pension. Such benefits are available to any member who retires early at the request of the employer, but are only available to members who retire early at their own request after attaining 62 years of age.
7. Section 74 of the *Act* provides certain benefits to plan members whose combination of age and continuous employment or membership in the plan equals at least 55, upon the wind up of a pension plan. These members may receive a pension in accordance with the terms of the plan, and where the consent of the employer is a requirement for eligibility for an ancillary benefit, under subsection 74(7) the employer is deemed to have given that consent.
8. Pursuant to section 74 of the *Act*, and pursuant to the terms of the Plan, those members of the Plan whose combination of age plus years of continuous employment or membership in the Plan equalled at least 55 at the effective date of the wind up have a right to receive a pension in accordance with sections 6.05 ("employer request early

- retirement benefits") and 7.04 ("bridge benefits") of the Plan, beginning at the date they would have reached age 55 with 10 years of service had the Plan not been wound up.
9. The Report provides benefits under section 6.05 ("employer request early retirement benefits") and under section 7.04 ("bridge benefits") to those members who were at least 55 years of age and had at least 10 years of service at the effective date of the wind up. The Report fails to provide these benefits to other members whose combination of age plus years of service equalled at least 55 at the effective date of the wind up.
  10. The Report provides only section 6.04 ("early retirement employee request benefits") to members whose combination of age plus years of service equalled at least 55 at the effective date of the wind up.
  11. The Report indicates (at p.8) that at the effective date of the partial wind up, the Plan had surplus assets. The Report fails to identify the surplus assets related to the partial wind up group.
  12. The Report fails to provide for the distribution of the surplus assets related to the partial wind up group, as required by the *Act*. Partial wind up is defined under the *Act* as "the termination of part of a pension plan and the distribution of the assets related to that part of the pension plan."
  13. Subsection 70(6) of the *Act* states that "on the partial wind up of a pension plan, members, former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits on the full wind up of a pension plan on the effective date of the partial wind up."
  14. As a result, the Report does not meet the requirements of the *Act* and regulations and does not protect the interests of the members and former members of the pension plan.
  15. Subsection 70(5) of the *Act* states that the Superintendent may refuse to approve a wind up report that does not meet the requirements of the *Act* and the regulations or that does not protect the interests of the members and former members of the pension plan.
  16. Such further and other reasons as may come to my attention.
- YOU ARE ENTITLED TO A HEARING** before the Financial Services Tribunal (the "Tribunal"), if you deliver to the Tribunal written notice that you require a hearing, within thirty (30) days after this Notice of Proposal to Refuse to Consent is served<sup>1</sup> on you.
- Your written notice requiring a hearing shall be delivered to:
- Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9
- Attention:** The Registrar
- IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**



DATED at Toronto, Ontario, this 15th day of  
May, 2001.

Dina Palozzi

Superintendent of Financial Services

NOTE - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8., as amended (the "*Act*");

**AND IN THE MATTER OF** an application pursuant to s. 78(1) of the *Act* submitted by the Independent Order of Foresters in respect of **The Independent Order of Foresters Fieldworkers' Pension Plan, Registration No. 0354399** (the "*Plan*");

**AND IN THE MATTER OF** an Actuarial Report on the Wind up of the Plan submitted by the Independent Order of Foresters;

**TO: The Independent Order of Foresters**

789 Don Mills Road  
Toronto, ON  
M3C 1T9

Attention: Ms Suanne M. Thuman Nielsen  
Senior Vice President-Human  
Resources and Communications  
**Applicant, Employer and  
Administrator of the Plan**

**Notice of Proposal to Refuse to  
Consent to Application and to Refuse  
to Approve a Wind Up Report**

**I PROPOSE TO REFUSE TO CONSENT** to the application for payment of surplus to the Employer dated April 12, 2000 pursuant to s. 78(1) of the *Act*.

**I PROPOSE TO REFUSE TO CONSENT  
TO THE APPLICATION FOR THE  
FOLLOWING REASONS:**

1. The Plan has at all material times been a defined contribution plan and it was wound up effective December 31, 1997.
2. The application includes an actuarial report (at Tab 8) prepared July 31, 1998, and a

supplementary report (at Tab 9) prepared March 30, 2000 (collectively the "Wind Up Report"), which identifies assets held in the pension fund of the Plan (the "Fund") which exceed the basic benefit entitlements of members and former members of the Plan on wind up and the provision made for expenses (the "Excess Assets"). The market value of the Excess Assets is \$1,433,760 as at December 31, 1999.

3. In response to the Superintendent's request for an explanation for the accumulation of the Excess Assets in a defined contribution plan, the Employer indicated that: "while it is not possible to determine the precise source of the surplus funds, the Applicant submits that the surplus assets likely arose due to the same factors that contribute to a surplus in a defined benefit pension plan: forfeitures from non vested employer contributions plus investment return thereon; and experience gains with respect to the annuitization of the account balances...."
4. The Employer further indicated that "The Plan permitted the Applicant to utilize forfeitures against its contribution obligations. Therefore it is the Applicant's position that the crediting of investment return to member and former member accounts did not give rise to the surplus existing in the Plan as at December 31, 1997".
5. Appendix B to the surplus attribution report dated March 30, 2000 (at Tab 22 of the application) indicates that the Employer has been taking contribution holidays since 1990.
6. The *Income Tax Act* (Canada) requires that any unused portion of forfeitures be





withdrawn from a pension plan or allocated to the members of the pension plan within one year of the forfeiture. Therefore it is unlikely that forfeitures have made any substantial addition to the Excess Assets.

7. Annuitization of account balances should not give rise to gains (or losses) in a defined contribution plan.
8. The Employer has not demonstrated that the Excess Assets constitute surplus for the purposes of the *Act*.
9. Therefore the Employer has not demonstrated that it has complied with s. 79(3)(a) of the *Act*, which requires that the Superintendent be satisfied that the plan has a surplus.
10. All of the assets of the Plan, including the Excess Assets and all contributions made by Employers and members have always been included in and formed part of the Fund.
11. From the inception of the Plan until at least 1988 the Plan documents provided that the Fund was to be used only for the purpose of the payment of benefits provided for under the Plan and that on discontinuance of the Plan, the Fund shall immediately vest in the members and shall be distributed or otherwise dealt with for their benefit in such equitable manner as the Supreme Court of the Order may with the advice of the actuary by resolution decide. Hence the Plan and the Fund may have been subject to a trust (express or implied) for the benefit of the members from inception of the Plan.
12. In 1988 the Plan documents were amended to deal with surplus and provide that surplus belonged to the Employer. However, if the Plan and the Fund were subject to a trust prior to 1988, that amendment would have been void, as there was no power to amend the Plan or to revoke the trust.
13. In any event, all of the assets of the Fund became subject to a trust in favour of the Plan's members and former members, pursuant to a Trust and Master Custodial Services Agreement dated June 21, 1995 (the "Trust Agreement").
14. The provisions of the Trust Agreement by which the Employer reserved to itself the power to amend and terminate the trust and by which the Employer was given power to direct the distribution of the assets, do not permit the Employer to revoke the trust.
15. The Trust Agreement prevails over any inconsistent provisions in the text of the Plan which purport to give the Employer a right to any surplus that might exist on wind up of the Plan.
16. Even if the Excess Assets did constitute surplus for purposes of the *Act*, the Employer has not demonstrated that the Plan provides for the payment of surplus to the Employer on the wind up of the Plan.
17. Therefore the Employer has not demonstrated that it has complied with s. 79(3)(b) of the *Act*, which requires that the Plan provide for payment of surplus to the Employer on the wind up of the Plan.
18. Such further and other reasons as may come to my attention.

#### **YOU ARE ENTITLED TO A HEARING**

before the Financial Services Tribunal (the "Tribunal"), if you deliver to the Tribunal written notice that you require a hearing, within thirty (30) days after this Notice of Proposal to Refuse to Consent is served<sup>1</sup> on you.



**I PROPOSE, PURSUANT TO SUBSECTION 70(5) OF THE ACT, TO REFUSE TO APPROVE THE WIND UP REPORT.**

**I PROPOSE**, pursuant to subsection 70(5) of the *Act*, **TO REFUSE TO APPROVE THE WIND UP REPORT FOR THE FOLLOWING REASONS:**

19. The reasons set out in paragraphs 1 to 7 (both inclusive) above.
20. The Employer has not demonstrated that the Excess Assets do not include any funds which should form part of or be used to provide benefits for former members.
21. Therefore the Employer has not demonstrated that the Wind Up Report protects the interests of the former members of the Plan, as required by s. 70(5) of the *Act*.
22. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING**, by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after the Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 19th day of March, 2001.

Dina Palozzi  
Superintendent of Financial Services

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, (the “Act”);

**AND IN THE MATTER OF** an application under s. 78(1) of the *Act* submitted by

**Samsonite Canada Inc.** in respect of the **Samsonite Canadian Service Related Pension Plan, Registration No. 398578** (the “Plan”);

**TO:** **Samsonite Canada Inc.**  
753 Ontario St.,  
Stratford, ON  
N5A 6B1

Attention: Mr. Fred Judge  
**Employer and Administrator  
of the Plan**

### **Notice of Proposal to Refuse to Consent to an Application**

**I PROPOSE TO REFUSE TO CONSENT** to the application of Samsonite Canada Inc. dated November 13, 2000, for the payment of surplus to the Employer under subsection 78(1) of the *Act*.

### **I PROPOSE TO REFUSE CONSENT FOR THE FOLLOWING REASONS:**

1. The Plan is a defined benefit plan implemented April 16, 1969, as the Samsonite of Canada Hourly Employee Pension Plan.
2. The Plan was established pursuant to a Trust Agreement made between Samsonite of Canada Ltd. and The Canada Trust Company, dated April 1, 1969 (the “Trust Agreement”).
3. Under the terms of the Trust Agreement, all contributions to the Plan are made to the Trustee. When received, the contributions and any earnings from them, constitute the

Trust Fund. Assets in the Trust Fund are held in trust for the benefit of the Plan’s members and their beneficiaries, as designated in or pursuant to the Plan.

4. The provisions of the Trust Agreement by which the Employer reserved to itself the power to amend and terminate the Plan and the Trust Agreement do not permit the Employer to use or divert any part of the Fund for purposes other than for the exclusive benefit of the persons designated in or pursuant to the Plan.
5. The provisions of the Trust Agreement by which the Employer reserved to itself the power to amend and terminate the Plan and the Trust Agreement do not permit the Employer to revoke the Trust.
6. The provisions of the Trust Agreement prevail over any subsequent amendments to the Plan or the Trust Agreement which purport to give the Employer a right to any surplus that might exist upon the wind up of the Plan.
7. The Employer has therefore not demonstrated that it has complied with subsection 79(3)(b) of the *Act* which requires that the pension plan provide for payment of surplus to the employer on wind up.
8. Such further and other grounds as may come to my attention.

### **YOU ARE ENTITLED TO A HEARING**

before the Financial Services Tribunal of Ontario (the “Tribunal”), pursuant to subsection 89(6) of the *Act*, if you deliver to the Tribunal, within thirty (30) days of the date of service of this Notice of Proposal, notice in writing requiring a hearing.<sup>1</sup>



Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 1st day of June, 2001.

Dina Palozzi

Superintendent of Financial Services

NOTE – PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Kamana Holdings Inc. Executive Pension Plan, Registration No. 407601**;

**TO:** **Kamana Holdings Inc.**  
30 Margaret Street  
St. Thomas, ON  
N5R 3H7

Attention: Mrs. Barbara Louis Ferriman  
**Applicant and Employer**

### Notice of Proposal

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment, out of the Kamana Holdings Inc. Executive Pension Plan, Registration No. 407601 (the "Plan"), to Kamana Holdings Inc. in the amount of \$150,000 as at December 1, 1999, plus investment earnings thereon to the date of payment.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Kamana Holdings Inc. is the employer as defined in the Plan (the "Employer").
2. As at December 1, 1999, the surplus in the Plan was estimated at \$815,343 on a solvency basis.
3. The Plan provides for payment of surplus to the Employer while the Plan is continuing.
4. The application discloses that by written agreement of the two members of the Plan, \$150,000 of the surplus in the Plan as at December 1, 1999, is to be distributed to the Employer.
5. The Employer has applied, pursuant to section 78 of the *Act*, and clause 10 of the Regulation, for consent of the Superintendent of Financial Services to the payment of \$150,000 of the surplus in the Plan as at December 1, 1999.
6. The application appears to comply with section 78 and subsection 79(1) of the *Act* and with clause 10 and subsection 25 of the Regulation.
7. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**



DATED at Toronto, Ontario, this 27th day of  
March, 2001.

Dina Palozzi

Superintendent of Financial Services

c.c. Mr. W.K. Simon, William M. Mercer  
Limited

NOTE – PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the “Act”);

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Pension Plan for Employees of Frank Mauro Construction Limited, Registration No. 409474**;

**TO:** **Frank Mauro Construction Limited**  
c/o Mr. Don Jackett  
McColl Turner and Company  
362 Queen Street  
Peterborough, ON  
K9H 3J6

Attention: Mr. Frank Mauro  
**Applicant and Employer**

### **Notice of Proposal**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment, out of the Pension Plan for Employees of Frank Mauro Construction Limited, Registration No. 409474 (the “Plan”), to Frank Mauro Construction Limited in the amount of \$28,400, as at December 31, 1998, plus investment earnings thereon to the date of payment.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Frank Mauro Construction Limited is the employer as defined in the Plan (the “Employer”).

2. The Plan was wound up, effective December 31, 1998.
3. As at December 31, 1998, the surplus in the Plan was estimated at \$28,400.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The Plan is a designated pension plan.
6. The application discloses that by written agreement of the sole member of the Plan, at the time of wind up, the surplus in the Plan is to be distributed 100% to the Employer.
7. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 100% of the surplus in the Plan.
8. The application appears to comply with section 78 and subsection 79(3) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
9. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the “Tribunal”) pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar



**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 26th day of March, 2001.

Dina Palozzi

Superintendent of Financial Services

c.c. Ms. Donna Wolfe, Cowan Wright Limited

\*NOTE - PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the “Act”);

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Pension Plan for Employees of C.J. Duguid Flooring (Ontario) Limited, Registration No. 0481457**;

**TO: C.J. Duguid Flooring (Ontario) Limited**  
317 Don Park Road  
Markham, ON  
L3R 1C2  
  
Attention: John Duguid  
President  
**Applicant and Employer**

### **Notice of Proposal**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment, out of the Pension Plan for Employees of C.J. Duguid Flooring (Ontario) Limited, Registration No. 0481457 (the “Plan”), to C.J. Duguid Flooring (Ontario) Limited in the amount of \$247,451 as at December 31, 1999, adjusted for investment earnings and losses thereon and expenses to the date of payment.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. C.J. Duguid Flooring (Ontario) Limited is the employer as defined in the Plan (the “Employer”).
2. The Plan was wound up, effective December 31, 1999.

3. As at December 31, 1999, the surplus in the Plan was estimated at \$247,451.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 100% of the active members and other members (as defined in the application), the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed 100% to the Employer.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 100% of the surplus in the Plan (after adding 100% of investment earnings and deducting 100% of the expenses related to the wind up of the Plan.)
7. The application appears to comply with section 78 and subsection 79(3) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the “Tribunal”) pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar



**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 22nd day of May, 2001.

Dina Palozzi

Superintendent of Financial Services

c.c. Donna Wolfe, Cowan Wright Limited

Timothy B. Lawrence, Cowan

Wright Limited

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended;

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, respecting the **Employee Retirement Plan for Employees of Murphy Distributing Ltd., Registration No. 512137;**

**TO: London Life Insurance Company**  
255 Dufferin Avenue  
London, ON  
N6A 4K1

Attention: Nancy Galpin  
Customer Service Specialist  
**Administrator**

**AND TO: Murphy Distributing Ltd.**  
P.O. Box 427  
37 Woodyatt Drive  
Brantford, ON  
N3T 5M3

Attention: Cameron Manning  
Chief Financial Officer  
**Employer**

### **Notice of Proposal to Make an Order**

**I PROPOSE TO ORDER** that the Employee Retirement Plan for the Employees of Murphy Distributing Ltd., Registration No. 512137 (the "Plan"), be wound up in whole effective November 26, 1999.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act").

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations made under the *Act*.
3. A significant number of members of the Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**THE ADMINISTRATOR IS REQUIRED** pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons:

**Cavalluzzo Hayes Shilton  
McIntyre & Cornish**

43 Madison Avenue  
Toronto, ON  
M5R 2S2

Attention: Elizabeth Shilton  
Counsel

**Legal Representative for the  
Retail Wholesale Canada  
Division of the C.A.W. ,  
Local 414**

**Schonfeld Inc. McIntyre  
& Cornish**

390 Bay Street, Suite 2400  
Toronto, ON  
M5H 2Y2

Attention: S. Harland Schonfeld, CA, CIP  
**Trustee in Bankruptcy for  
Murphy Distributing Ltd.**

DATED at Toronto, Ontario, this 29th day of  
May, 2001.

Dina Palozzi

Superintendent of Financial Services

NOTE - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8., as amended (the "*Act*");  
**AND IN THE MATTER OF** a Partial Wind Up Report submitted by CBS Canada Inc. to the Superintendent of Financial Services respecting the **Westinghouse Canada Inc. Consolidated Pension Plan, Registration No. 526632** (the "*Plan*");

**TO:** **CBS Canada Inc.**  
 11 Stanwix Street  
 Pittsburgh, Pennsylvania  
 15222-1384  
 USA

Attention: Julie Forsythe  
**Administrator and Employer**

### **Notice of Proposal to Refuse to Approve a Partial Wind Up Report**

**I PROPOSE**, pursuant to subsection 70(5) of the *Act*, **TO REFUSE TO APPROVE** the Partial Wind Up Report (the "*Report*"), prepared by William M. Mercer Limited for the Westinghouse Canada Inc. Pension Plan, Registration No. 526632, (the "*Plan*"), as at November 1, 1992, in respect of the business carried on by Westinghouse at its London, Ontario and St. Jean, Quebec plants.

### **I PROPOSE TO REFUSE TO APPROVE THE REPORT FOR THE FOLLOWING REASONS:**

1. CBS Canada Inc., formerly Westinghouse Canada Inc. ("*Westinghouse*"), is the employer and administrator of the Plan.
2. In May 1999, the Superintendent ordered the Plan partially wound up effective November 1, 1992, in respect of members with entitlements under the Plan who were employed at the employer's London,

Ontario and St. Jean, Quebec plants.

3. Westinghouse filed the Report in March 2000.
4. Section 6.02 of the Plan allows a member to request early retirement at any time after having attained 55 years of age. The employer also may request that an employee retire at any time after the employee has attained 55 years of age.
5. Section 7.02 (a) of the Plan provides for early retirement benefits at the request of plan members ("employee request early retirement benefits"). Section 7.02 (b) of the Plan provides for early retirement benefits at the request of the employer ("employer request early retirement benefits"). Section 7.02 (b) benefits are more financially advantageous to retired employees than section 7.02 (a) benefits.
6. Section 7.04 of the Plan provides for a "bridge benefit" to members retiring before they become eligible to receive an Old Age Security pension. Such benefits are available to any member who retires early at the request of the employer, but are only available to members who retire early at their own request after attaining 62 years of age.
7. Section 74 of the *Act* provides certain benefits to plan members whose combination of age and continuous employment or membership in the plan equals at least 55, upon the wind up of a pension plan. These members may receive a pension in accordance with the terms of the plan, and where the consent of the employer is a requirement for eligibility for an ancillary benefit, under subsection 74(7) the employer is deemed to have given that consent.

8. Pursuant to section 74 of the *Act*, and pursuant to the terms of the Plan, those members of the Plan whose combination of age plus years of continuous employment or membership in the Plan equalled at least 55 at the effective date of the wind up have a right to receive a pension in accordance with sections 7.02 (b) ("employer request early retirement benefits") and 7.04 ("bridge benefits") of the Plan, beginning at the date they would have reached age 55 with 10 years of service had the Plan not been wound up. The Report provides benefits under section 7.02.(b) ("employer request early retirement benefits") and 7.04 ("bridge benefits") to those members who were at least 55 years of age and had at least 10 years of service at the effective date of the wind up. The Report fails to provide these benefits to other members whose combination of age plus years of service equalled at least 55 at the effective date of the wind up.
9. The Report provides only section 7.02 (a) benefits ("employee request early retirement benefits") to members whose combination of years plus service equals at least 55 at the effective date of the wind up.
10. The Report indicates that the Plan had a funding deficit as of December 31, 1992. The deficit related to the Ontario partial wind up members is \$230,996. However, as of January 1, 2000, the Plan had a surplus. The surplus calculated as of January 1, 2000, amounts to \$46,042 for the Ontario members.
11. The Report indicates (at p. 21) that after the settlement of basic benefits has been completed, any excess assets shall be retained in the Plan.
12. The Report fails to provide for the distribution of the surplus assets related to the Ontario partial wind up group, as required by the *Act*. Partial wind up is defined under the *Act* as "the termination of part of a pension plan and the distribution of the assets related to that part of the pension plan."
13. Subsection 70(6) of the *Act* states that "on the partial wind up of a pension plan, members, former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits on the full wind up of a pension plan on the effective date of the partial wind up."
14. As a result, the Report does not meet the requirements of the *Act* and regulations and does not protect the interests of the members and former members of the pension plan.
15. Subsection 70(5) of the *Act* states that the Superintendent may refuse to approve a wind up report that does not meet the requirements of the *Act* and the regulations or that does not protect the interests of the members and former members of the pension plan.
16. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** before the Financial Services Tribunal (the "Tribunal") if you deliver to the Tribunal written notice that you require a hearing, within thirty (30) days after this notice of proposal to refuse to consent is served<sup>1</sup> on you. Your written notice requiring a hearing shall be delivered to:



Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 9th day of May, 2001.

Dina Palozzi

Superintendent of Financial Services

NOTE - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8., as amended (the "Act");

**AND IN THE MATTER OF** a Partial Wind Up Report submitted by CBS Canada Inc. to the Superintendent of Financial Services respecting the **Westinghouse Canada Inc.**

**Consolidated Pension Plan, Registration No. 526632** (the "Plan");

**TO:** **CBS Canada Inc.**  
11 Stanwix Street  
Pittsburgh, Pennsylvania  
15222-1384  
USA

Attention: Julie Forsythe  
**Administrator and Employer**

### **Notice of Proposal to Refuse to Approve a Partial Wind Up Report**

**I PROPOSE**, pursuant to subsection 70(5) of the *Act*, **TO REFUSE TO APPROVE** the Partial Wind Up Report (the "Report"), prepared by William M. Mercer Limited for the Westinghouse Canada Inc. Consolidated Pension Plan, Registration No. 526632, (the "Plan"), as at April 30, 1995, in respect of the business carried on by Westinghouse at its Motors Division plant.

### **I PROPOSE TO REFUSE TO APPROVE THE REPORT FOR THE FOLLOWING REASONS:**

1. CBS Canada Co., formerly Westinghouse Canada Inc. ("Westinghouse"), is the employer and administrator of the Plan.
2. The Plan was partially wound up as a result of the plant shutdown of the Westinghouse Motors Division in April 1995.
3. Westinghouse filed the Report in October 1996.
4. Section 6.02 of the Plan allows a member to request early retirement at any time after having attained 55 years of age. The employer also may request that an employee retire at any time after the employee has attained 55 years of age.
5. Section 7.02 (a) of the Plan provides for early retirement benefits at the request of plan members ("employee request early retirement benefits"). Section 7.02 (b) of the Plan provides for early retirement benefits at the request of the employer ("employer request early retirement benefits"). Section 7.02 (b) benefits are more financially advantageous to retired employees than section 7.02 (a) benefits.
6. Section 7.04 of the Plan provides for a "bridge benefit" to members retiring before they become eligible to receive an Old Age Security pension. Such benefits are available to any member who retires early at the request of the employer, but are only available to members who retire early at their own request after attaining 62 years of age.
7. Section 74 of the *Act* provides certain benefits to plan members whose combination of age and continuous employment or membership in the plan equals at least 55, upon the wind up of a pension plan. These members may receive a pension in accordance with the terms of the plan, and where the consent of the employer is a requirement for eligibility for an ancillary benefit, under subsection 74(7) the employer is deemed to have given that consent.





8. Pursuant to section 74 of the *Act*, and pursuant to the terms of the Plan, those members of the Plan whose combination of age plus years of continuous employment or membership in the Plan equalled at least 55 at the effective date of the wind up have a right to receive a pension in accordance with sections 7.02 (b) ("employer request early retirement benefits") and 7.04 ("bridge benefits") of the Plan, beginning at the date they would have reached age 55 with 10 years of service had the Plan not been wound up.
9. The Report provides benefits under section 7.02.(b) ("employer request early retirement benefits") and 7.04 ("bridge benefits") to those members who were at least 55 years of age and had at least 10 years of service at the effective date of the wind up. The Report fails to provide these benefits to other members whose combination of age plus years of service equalled at least 55 at the effective date of the wind up.
10. The Report provides only section 7.02 (a) benefits ("employee request early retirement benefits") to members whose combination of years plus service equals at least 55 at the effective date of the wind up.
11. As a result, the Report does not meet the requirements of the *Act* and regulations and does not protect the interests of the members and former members of the pension plan.
12. Subsection 70(5) of the *Act* states that the Superintendent may refuse to approve a wind up report that does not meet the requirements of the *Act* and the regulations

or that does not protect the interests of the members and former members of the pension plan.

13. Such further and other reasons as may come to my attention.

### **YOU ARE ENTITLED TO A HEARING**

before the Financial Services Tribunal (the "Tribunal") if you deliver to the Tribunal written notice that you require a hearing, within thirty (30) days after this notice of proposal to refuse to consent is served<sup>1</sup> on you. Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 15th day of May, 2001.

Dina Palozzi  
Superintendent of Financial Services

<sup>1</sup>NOTE - PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Retirement Plan for the Employees of Furnas Electric Company, Registration No. 532234;**

**TO:** **Siemens Canada Limited**  
**Applicant**  
 c/o Ms. Farida Samji  
 William M. Mercer Limited  
 BCE Place  
 161 Bay Street, P.O. Box 501  
 Toronto, ON  
 M5J 2S5

### **Notice of Proposal**

**I PROPOSE TO MAKE AN ORDER** under s. 78(1) of the *Act*, consenting to the payment, out of the Retirement Plan for the Employees of Furnas Electric Company, Registration No. 532234 (the "Plan"), to Siemens Canada Limited in the amount equal to 50% of the net surplus after taking into account the investment earnings realized and expenses incurred to the date of surplus payment. The plan had a surplus of \$218,822 as at September 30, 1996, the effective date of the wind up.

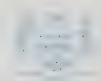
### **I PROPOSE TO MAKE THE ORDER**

effective only after the Applicant satisfies me that all benefits and other payments, including any enhancements arising from the surplus sharing agreement, to which members, former members and any other persons are entitled on

the termination of the pension plan have been paid or provided for by the administrator of the pension plan.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. The employer as defined in the Plan is Furnas Electric Company. Pursuant to an Asset Purchase Agreement, the Plan was transferred to Siemens Electric Limited. The applicant, Siemens Canada Limited, is the corporation resulting from the amalgamation of Siemens Electric Limited and Siemens Hearing Instruments Ltd.
2. The Plan was wound up, effective September 30, 1996.
3. As at September 30, 1996, the surplus in the Plan was estimated at \$218,822.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 76% of the active members, and 100% of the former members, and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
  - a) 50% to the Employer; and
  - b) 50% to the beneficiaries of the Plan as defined in the surplus distribution agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan (after adding 50% of investment earnings and deducting 50% of the expenses related to the wind up of the Plan.)



7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 11th day of April, 2001.

Dina Palozzi

Superintendent of Financial Services

c.c. Mr. John Molé, Siemens Canada Limited

<sup>1</sup>NOTE - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

**AND IN THE MATTER OF** an application by Camco Inc. for the consent of the Superintendent of Financial Services to transfer the assets of **Camco Inc. Pension Plan No.**

**4, Registration No. 0583302 to Camco Inc. Pension Plan No. 7, Registration No. 0583336;**

**TO: Camco Inc.**  
5800 Keaton Crescent  
Mississauga, ON  
L5R 3K2

Attention: Ms. Irene Lum  
**Employer and Administrator  
of the Camco Inc. Pension  
Plan No. 4 and the Camco  
Inc. Pension Plan No. 7**

### **Notice of Proposal to Refuse to Consent to a Transfer of Assets**

**I PROPOSE TO REFUSE TO CONSENT** to a transfer of assets proposed by Camco Inc. from the Camco Inc. Pension Plan No. 4 ("Plan No. 4"), Registration No. 0583302 to the Camco Inc. Pension Plan No. 7 ("Plan No. 7"), Registration No. 0583336.

### **I PROPOSE TO REFUSE THIS CONSENT FOR THE FOLLOWING REASONS:**

1. Camco Inc. ("Camco") is the employer and administrator of Plan No. 4 and Plan No. 7.
2. In December 1999, Camco applied for a consent to the transfer of assets from Plan No. 4 to Plan No. 7, effective January 1, 1999, which would result in the merger of the two plans.
3. The actuarial reports submitted in support of Camco's application state that at the effective date of the merger, Plan No. 4 had 129 former members, a solvency surplus of \$1,806,000, and a transfer ratio of 1.62.
4. The actuarial reports submitted in support of Camco's merger application state that at the effective date of the merger, Plan No. 7 had 1,578 members and former members, a solvency deficit of \$3,673,000.00, and a transfer ratio of 0.70.
5. The actuarial reports submitted in support of Camco's merger application state that immediately after the merger, the merged plan will have a solvency deficit of \$1,867,000.00 and a transfer ratio of 0.74.
6. In July of 2000, Camco amended its application to provide that annuities will be purchased for all the former members of Plan No. 4 immediately after the merger. Camco claims that this will raise the transfer ratio for the merged plan to over 0.80.
7. The asset transfer does not protect the pension benefits and other benefits of the former members of Plan No. 4 under subsection 81(5) of the *Act*. Since the transfer ratio of the merged (importing) plan is less than the highest transfer ratio of one of the exporting plans, Plan No. 4, and is less than 1.0 the benefits of the former plan members may not be protected.
8. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.





Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 30th day of March, 2001.

Dina Palozzi

Superintendent of Financial Services

21241

NOTE - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Forest City International Trucks Ltd. Non-Contributory Retirement Plan (for Salaried Non-Managerial Non-Unionized Employees), Registration No. 597948;**

**TO: Ernst & Young Inc.**  
 222 Bay Street  
 P. O. Box 251  
 Toronto-Dominion Centre  
 Toronto, ON  
 M5K 1J7

Attention: Felix Hsu  
 Manager  
**Administrator of the Forest City International Trucks Ltd. Non-Contributory Retirement Plan (for Salaried Non-Managerial Non-Unionized Employees)**

**AND TO: Forest City International Trucks Ltd.**

3003 Page Street  
 London, ON  
 N5V 4J1

Attention: John Parliament  
 Controller  
**Employer**

## **Notice of Proposal to Make a Declaration**

### **WHEREAS:**

1. The Forest City International Trucks Ltd. Non-Contributory Retirement Plan (for Salaried Non-Managerial Non-Unionized Employees), Registration Number 597948 (the "Pension Plan") is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective May 25, 1991; and
4. The Superintendent of Pensions appointed Ernst & Young Inc. as the administrator (the "Administrator") of the Pension Plan on February 5, 1992.

**NOW THEREFORE TAKE NOTICE** I propose to consider to make a declaration pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan **FOR THE FOLLOWING REASONS:**

1. The Wind Up Report filed by the Administrator indicates an estimated funding deficiency of \$76,408.00 as at May 25, 1991, and an estimated claim against the Guarantee Fund as at September 30, 2000, of \$192,728.00.
2. On May 25, 1991, Forest City International Trucks Ltd. was assigned into bankruptcy.



3. The trustee in bankruptcy of Forest City International Trucks Ltd. had advised the Administrator that there were no assets available for the Pension Plan. The trustee was discharged in October, 1993.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 26th day of March, 2001.

Dina Palozzi  
Superintendent of Financial Services

<sup>1</sup>NOTE - PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P.8, as amended,  
respecting the **Pension Plan for Employees  
of JPE Canada Inc. who are members of  
C.A.W. Locals 1524 and 1987 (formerly  
known as the Pension Plan for  
Employees of Pebra Inc. who are  
members of C.A.W. Locals 1524 and  
1987), Registration No. 694570;**

**TO: PricewaterhouseCoopers  
Limited**

Suite 1100  
One Robert Speck Parkway  
Mississauga, ON  
L4Z 3M3

Attention: Lois Reyes  
Senior Counsel  
**Administrator**

**AND TO: JPE Canada Inc.**  
775 Technology Drive  
P.O. Box 660  
Peterborough, ON  
K9J 6Z8

Attention: Robert Tock  
Controller  
**Employer**

### **Notice of Proposal to Make an Order**

**I PROPOSE TO ORDER** that the Pension  
Plan for Employees of JPE Canada Inc. who are  
Members of C.A.W. Locals 1524 and 1987  
(formerly known as the Pension Plan for  
Employees of Pebra Inc. who are members of  
C.A.W. Locals 1524 and 1987), Registration

No. 694570 (the "Plan"), be wound up in  
whole effective February 9, 1999.

I propose to make this order pursuant to  
subsection 69(1) of the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "Act").

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension of  
employer contributions to the pension fund.
2. The employer is bankrupt within the  
meaning of the *Bankruptcy and Insolvency  
Act (Canada)*, R.S. 1985, c.B-3, as amended.
3. A significant number of members of the Plan  
ceased to be employed by the employer as a  
result of the discontinuance of all or part of  
the business of the employer or as a result of  
the reorganization of the business of the  
employer.

**YOU ARE ENTITLED TO A HEARING** by  
the Financial Services Tribunal (the "Tribunal")  
pursuant to subsection 89(6) of the *Act* if,  
within thirty (30) days after this Notice of  
Proposal is served<sup>1</sup> on you, you deliver to the  
Tribunal a written notice that you require  
a hearing.

Your written notice requiring a hearing shall be  
delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar





**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**THE ADMINISTRATOR IS REQUIRED,** pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons:

**C.A.W. Local 1524**

600 Wabanaki Drive  
Kitchener, ON  
N2C 2K4

Attention: David Bailey  
President  
**Union**

**C.A.W. Local 1987**

654 Rogers Street  
Peterborough, ON  
K9H 1Y2

Attention: Ms. Rose Forrestall  
President  
**Union**

**C.A.W. Canada**

205 Placer Court  
North York, ON  
M2H 3H9

Attention: Tom Murphy  
National Representative  
**Union**

**Grant Thornton Limited**

Royal Bank Plaza  
19th Floor, South Tower  
200 Bay Street  
Box 55  
Toronto, ON  
M5J 2P9

Attention: Andrea Orr  
**Interim Receiver and Trustee  
in Bankruptcy for JPE  
Canada Inc.**

DATED at Toronto, Ontario, this 2nd day of  
March, 2001.

Dina Palozzi  
Superintendent of Financial Services  
21730

NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order, pursuant to section 69 of the *Pension  
Benefits Act*, respecting **The Pension Plan for  
the Employees of Tee-Comm Electronics  
Inc., Registration No. 0905075;**

**TO: The Manufacturers Life  
Insurance Company**

500 King Street North,  
Waterloo, ON  
N2J 4C6

Attention: Ms. Karen Osborne  
Discontinuance Underwriter  
**Administrator of The  
Pension Plan for the  
Employees of Tee-Comm  
Electronics Inc.**

**AND TO: Tee-Comm Electronics Inc.**  
775 Main Street East,  
Milton, ON  
L9T 3Z3

Attention: Reg Tiessen  
Director of Finance  
**Employer**

### **Notice of Proposal to Make an Order**

**I PROPOSE TO ORDER** that The Pension  
Plan for the Employees of Tee-Comm  
Electronics Inc., Registration No. 0905075, be  
wound up effective June 30, 1997.

I propose to make this Order pursuant to  
subsection 69(1) of the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "Act").

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There has been a cessation or suspension of  
employer contributions to the pension fund,  
under paragraph 69(1)(a) of the Act;
2. The employer is bankrupt within the  
meaning of the *Bankruptcy Act* (Canada)  
under paragraph 69(1)(c) of the Act;
3. A significant number of members have  
ceased to be employed by the employer as  
the result of the discontinuance of the  
business of the employer, under paragraph  
69(1)(d) of the Act;
4. All of the business of the employer has been  
discontinued under paragraph 69(1)(e) of  
the Act.

**YOU ARE ENTITLED TO A HEARING** by  
the Financial Services Tribunal (the "Tribunal")  
pursuant to subsection 89(6) of the Act if,  
within thirty (30) days after this Notice of  
Proposal is served<sup>1</sup> on you, you deliver to the  
Tribunal a written notice that you require  
a hearing.

Your written notice requiring a hearing shall be  
delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE  
TRIBUNAL, WITHIN THIRTY (30) DAYS  
FROM THE DATE THIS NOTICE OF  
PROPOSAL IS SERVED ON YOU, A  
WRITTEN NOTICE THAT YOU REQUIRE  
A HEARING, I MAY MAKE THE ORDER  
PROPOSED HEREIN.**

**THE ADMINISTRATOR IS REQUIRED,**

pursuant to subsection 89(5) of the Act, to transmit a copy of this Notice of Proposal to Make an Order to the following persons:

**Ernst & Young Inc.**

Ernst & Young Tower  
Toronto-Dominion Centre  
P.O. Box 251  
222 Bay Street,  
Toronto, ON  
M5K 1J7

Attention: Sharon Hamilton

**Receiver for Tee-Comm Electronics Inc.****KPMG Inc.**

Suite 3300, Commerce Court West  
P.O. Box 31, Stn. Commerce Court  
Toronto, ON  
M5L 1B2

Attention: Jack Richards  
Vice President

**Trustee In Bankruptcy for Tee-Comm Electronics**

DATED at Toronto, Ontario, this 9th day of May, 2001.

Dina Palozzi  
Superintendent of Financial Services  
21640

NOTE – PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P.8, as amended,  
respecting the **Royal Oak Mines Inc.  
Pension Plan for Timmins Salaried  
Employees, Registration No. 937458;**

**TO: Deloitte & Touche Inc.,  
by its agent**  
Morneau Sobeco  
1500 Don Mills Road, Suite 500  
Toronto, ON  
M3B 3K4

Attention: Julie Seewald  
Associate Consultant  
**Administrator**

**AND TO: Royal Oak Mines Inc.**  
P.O. Box 2010  
Timmins, ON  
P4N 7X7

Attention: Rachel A. Pineault  
Pension Administrator  
**Employer**

### Notice of Proposal to Make an Order

**I PROPOSE TO ORDER** that the Royal Oak  
Mines Inc. Pension Plan for Timmins Salaried  
Employees, Registration No. 937458 (the "Plan")  
be wound up in whole effective between  
September 1, 1999, and February 14, 2000.

I propose to make this order pursuant to  
subsection 69(1) of the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "Act").

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension of  
employer contributions to the pension fund,  
within the meaning of clause 69(1)(a) of  
the *Act*.
2. The employer failed to make contributions  
to the pension fund as required by the *Act* or  
the regulations within the meaning of clause  
69(1)(b) of the *Act*.
3. A significant number of members of the  
pension plan ceased to be employed by the  
employer as a result of the discontinuance of  
all or part of the business of the employer or  
as a result of the reorganization of the  
business of the employer, within the  
meaning of clause 69(1)(d) of the *Act*.
4. All or a significant portion of the business  
carried on by the employer at a specific  
location was discontinued, within the  
meaning of clause 69(1)(e) of the *Act*.

**YOU ARE ENTITLED TO A HEARING** by  
the Financial Services Tribunal (the "Tribunal")  
pursuant to subsection 89(6) of the *Act* if,  
within thirty (30) days after this Notice of  
Proposal is served<sup>1</sup> on you, you deliver to the  
Tribunal a written notice that you require a  
hearing.

Your written notice requiring a hearing shall be  
delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar





**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**THE ADMINISTRATOR IS REQUIRED**

pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons:

**PricewaterhouseCoopers Inc.**

18th Floor, 145 King Street West  
Toronto, ON  
M5H 1V8

Attention: Jim Reive  
Sr. Associate, Financial  
Advisory Services

**Interim Receiver for Royal  
Oak Mines Inc.**

DATED at Toronto, Ontario, this 11th day of  
June, 2001.

Dina Palozzi  
Superintendent of Financial Services

NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P.8, as amended,  
respecting the **Royal Oak Mines Inc.  
Pension Plan for Timmins Hourly  
Employees, Registration No. 937466;**

**TO: Deloitte & Touche Inc.,  
by its agent  
Morneau Sobeco  
1500 Don Mills Road, Suite 500  
Toronto, ON  
M3B 3K4**

Attention: Julie Seewald  
Senior Analyst  
**Administrator**

**AND TO: Royal Oak Mines Inc.  
P.O. Box 2010  
Timmins, ON  
P4N 7X7**

Attention: Rachel A. Pineault  
Pension Administrator  
**Employer**

### **Notice of Proposal to Make an Order**

**I PROPOSE TO ORDER** that the Royal Oak  
Mines Inc. Pension Plan for Timmins Hourly  
Employees, Registration No. 937466 (the  
"Plan") be wound up in whole effective  
between September 20, 1999, and  
December 23, 1999.

I propose to make this order pursuant to  
subsection 69(1) of the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended (the "Act").

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension of  
employer contributions to the pension fund,  
within the meaning of clause 69(1)(a) of  
the *Act*.
2. The employer failed to make contributions  
to the pension fund as required by the *Act* or  
the regulations within the meaning of clause  
69(1)(b) of the *Act*.
3. A significant number of members of the  
pension plan ceased to be employed by the  
employer as a result of the discontinuance of  
all or part of the business of the employer or  
as a result of the reorganization of the  
business of the employer, within the  
meaning of clause 69(1)(d) of the *Act*.
4. All or a significant portion of the business  
carried on by the employer at a specific  
location was discontinued, within the  
meaning of clause 69(1)(e) of the *Act*.

**YOU ARE ENTITLED TO A HEARING** by  
the Financial Services Tribunal (the "Tribunal")  
pursuant to subsection 89(6) of the *Act* if,  
within thirty (30) days after this Notice of  
Proposal is served<sup>1</sup> on you, you deliver to the  
Tribunal a written notice that you require a  
hearing.

Your written notice requiring a hearing shall be  
delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar



**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**THE ADMINISTRATOR IS REQUIRED**

pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons:

**Sack Goldblatt Mitchell**

Barristers & Solicitors  
20 Dundas Street West  
Suite 1130, P.O. Box 180  
Toronto, ON  
MSG 2G8

Attention: Michael Kainer

**Legal Representative for  
the Union, the United  
Steelworkers of America**

**PricewaterhouseCoopers Inc.**

18th Floor, 145 King Street West  
Toronto, ON  
MSH 1V8

Attention: Jim Reive

Sr. Associate, Financial  
Advisory Services

**Interim Receiver for Royal  
Oak Mines Inc.**

DATED at Toronto, Ontario, this 11th day of  
June, 2001.

Dina Palozzi  
Superintendent of Financial Services

NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(4) of the *Act* consenting to a payment out of the **Pension Plan for Salaried Employees of Humpty Dumpty Snack Foods Inc., Registration No. 944876;**

**TO: Humpty Dumpty Snack Foods Inc.**

3065 King Street East  
Kitchener, ON  
N2A 1B1

Attention: Lois Norris  
VP Finance & CFO  
**Applicant and Employer**

### Notice of Proposal

**I PROPOSE TO MAKE AN ORDER** under s. 78(4) of the *Act*, consenting to the payment, out of the Pension Plan for Salaried Employees of Humpty Dumpty Snack Foods Inc., Registration No. 944876 (the "Plan"), to Humpty Dumpty Snack Foods Inc. in the amount of \$76,330.73.

**I PROPOSE TO MAKE THE ORDER** effective September 13, 2000.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Humpty Dumpty Snack Foods Inc. is the employer as defined in the Plan (the "Employer").
2. The Employer made contributions of \$76,330.55 in respect of the period

January 1, 2000 to September 13, 2000, inclusive. These payments were based on the recommended contributions in the actuarial report effective December 1998. The contributions should have been based on the actuarial report effective December 31, 1999, which recommended no contributions for the year 2000.

3. The actuarial report effective December 31, 1999, has been filed with the Financial Services Commission of Ontario.
4. Evidence of this overpayment to the fund for the period January 1, 2000 to September 13, 2000 has been submitted to the Financial Services Commission of Ontario.
5. The Employer has distributed copies of the notice of application for the refund of employer overpayment to the pension fund to all members and former members.
6. There were no member submissions about the overpayment.
7. The application appears to comply with section 78(4) of the *Act*.
8. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar





**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 23rd day of April, 2001.

Dina Palozzi

Superintendent of Financial Services

c.c. Alan F. Exley, Cowan Wright Limited

c.c. Sue McGrath, Cowan Wright Limited

NOTE - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Van Dresser Limited Non-Contributory Pension Plan (the "Pension Plan")**, Registration No. 960005 (formerly C-100753);

**TO:** **Ernst & Young Inc.**  
Ernst & Young Tower  
Toronto-Dominion Centre  
P. O. Box 251, 222 Bay Street  
Toronto, ON  
M5K 1J7

Attention: Mr. Brian Denega  
Senior Vice-President  
**Administrator of the Van Dresser Limited Non-Contributory Pension Plan**

**AND TO:** **Van Dresser Limited**  
139 Northfield Drive  
Waterloo, ON  
N2L 5A6

Attention: Jeff Bradshaw  
Controller  
**Employer**

**AND TO:** **KPMG Inc. (formerly Peat Marwick Thorne Inc.)**  
Suite 3300, Commerce Court West  
P. O. Box 31,  
Station Commerce Court  
Toronto, ON  
M5L 1B2

Attention: Mr. Michael Creber  
Senior Vice-President  
**Trustee in Bankruptcy and Receiver and Manager, Van Dresser Limited**

**AND TO:** **C.A.W.-Canada**  
205 Placer Court  
North York, ON  
M2H 3H9

Attention: Mr. Lewis Gottheil  
Counsel  
**Union Representative**

### **Notice of Proposal to Make a Declaration**

#### **WHEREAS:**

1. The Van Dresser Limited Non-Contributory Pension Plan, Registration No. 960005 (formerly C-100753) (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Pension Plan was wound up effective July 17, 1992; and
4. The Superintendent of Pensions appointed Ernst & Young Inc. as the administrator (the "Administrator") of the Pension Plan on September 9, 1992.



**NOW THEREFORE TAKE NOTICE** I propose to consider to make a declaration pursuant to section 83 of the *Act* that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Supplement to the Wind Up Report filed by the Administrator indicates an estimated funding deficiency of \$372,871.00 as at May 31, 2001.
2. KPMG Inc. was appointed Receiver and Manager of Van Dresser Limited on February 21, 1992 and Trustee in Bankruptcy on May 5, 1992.
3. The trustee in bankruptcy of Van Dresser Limited has advised the Administrator that there are no assets available from the estate of Van Dresser Limited for the Pension Plan.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS**

**FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 31st day of May, 2001.

Dina Palozzi

Superintendent of Financial Services

<sup>1</sup>NOTICE PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");  
**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under section 69 of the Act, respecting the **Pension Plan for Limitorque of Canada Ltd., Registration No. 979187** (the "Plan");

**TO:** **Canadian Worcester Controls Limited**  
 c/o Invensys Inc.  
 33 Commercial Street  
 B52-S1 Foxboro, Massachusetts  
 02035  
 USA

Attention: Ms. Allyn Jerome  
 Benefits Specialist  
**Employer and Administrator**

#### **Notice of Proposal to Make an Order**

**I PROPOSE TO ORDER** that the Plan be wound up in part in relation to those members and former members of the Plan who were employed by Limitorque of Canada Ltd. (the "Employer") and who ceased to be employed by the Employer effective between February 1, 1995 and January 31, 1996, or the date the last Plan member employed by the Employer ceased employment, whichever is later, as a result of:

- (i) the discontinuance of all or part of the business of the Employer; or
- (ii) the discontinuance of all or a significant portion of the business carried on by the Employer at a specific location.

I propose to make this order pursuant to subsection 69(1) of the Act.

#### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Limitorque of Canada Ltd. is the employer and administrator of the Plan.
2. A significant number of members of the Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer between February 1, 1995 and January 31, 1996, within the meaning of s.69(1)(d) of the Act.
3. All or a significant portion of the business carried on by the Employer at a specific location was discontinued between February 1, 1995 and January 31, 1996, within the meaning of ss.69(1)(e) of the Act.
4. Such further and other reasons that may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
 14th Floor, 5160 Yonge Street  
 Toronto, ON  
 M2N 6L9

**Attention:** The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**



**THE ADMINISTRATOR IS REQUIRED,**

pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons: all members and former members of the Plan who were employed by the Employer and who ceased to be employed by the Employer effective between February 1, 1995 and January 31, 1996.

DATED at Toronto, Ontario, this 8th day of June, 2001.

Dina Palozzi

Superintendent of Financial Services

<sup>1</sup>NOTE – PURSUANT to section 112 of the *Act*, any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(4) of the Act consenting to a payment out of the **Pension Plan for Unionized Employees of Flexia Corporation at Brantford, Registration No. 980037**;

**TO:** **Flexia Corporation**  
369 Elgin Street  
Brantford, ON  
N3S 7P5

Attention: Mr. Duncan Fletcher  
Chief Financial

**Applicant and Employer**

### Notice of Proposal

**I PROPOSE TO MAKE AN ORDER** under s. 78(4) of the Act, consenting to the payment, out of The Pension Plan for Unionized Employees of Flexia Corporation, Registration No. 980037 (the "Plan"), to Flexia Corporation, in the amount of \$130,115.31 as at December 27, 2000 plus investment earnings thereon to the date of payment.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Flexia Corporation is the employer as defined in the Plan (the "Employer").
2. The Employer had made contribution to the fund of \$245,085 during fiscal year 2000, based on the recommended contributions in the actuarial report effective December 31, 1997. The contributions exceeded the minimum funding amounts as per the actuarial

report effective December 31, 1999 by \$221,085.45.

3. The actuarial reports, effective December 31, 1997 and December 31, 1999, have been filed with the Financial Services Commission of Ontario.
4. Evidence of the payments during fiscal year 2000 has been submitted with the application.
5. The application appears to comply with subsection 78(4) of the Act.
6. Such further and other reasons as come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act if, within thirty (30) days after this Notice of Proposal is served<sup>1</sup> on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9

**Attention:** The Registrar



**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

DATED at Toronto, Ontario, this 17th day of May, 2001.

Dina Palozzi

Superintendent of Financial Services

c.c. Mr. Chris T. Tomev, E.S.A., Avalon Actuarial Consulting Inc.

NOTE - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** the Partial Windup Report as at May 7, 1997, filed by Consumers Packaging Inc. in May 2000, with respect to the **Consumers Packaging Inc. Pension Plan II, Registration No. 0998682** (the "Plan"), and Amendment No. 2 to the Plan dated May 18, 1997;

TO: **Consumers Packaging Inc.**  
777 Kipling Avenue  
Etobicoke, ON  
M8Z 5Z4

Attention: Phil Coupey and Suzanne Hudon  
**Employer and Administrator  
of the Plan**

**Notice of Proposal to Refuse to Approve  
a Partial Wind Up Report and to Refuse  
to Register an Amendment**

**I PROPOSE TO REFUSE TO APPROVE A  
PARTIAL WIND UP REPORT** filed by Consumers Packaging Inc. on May 19, 2000, with respect to a partial wind up of the Plan effective May 7, 1997, pursuant to subsection 70(5) of the Act.

**I ALSO PROPOSE TO REFUSE TO  
REGISTER AN AMENDMENT** to the Plan dated May 18, 2000 and filed by Consumers Packaging Inc. on May 19, 2000, titled Amendment No. 2, pursuant to clause 18(1)(d) of the Act.

**I PROPOSE TO MAKE THESE REFUSALS  
FOR THE FOLLOWING REASONS:**

1. Consumers Packaging Inc. is the employer and administrator of the Plan. As a result of the closure of its plant in Hamilton, Ontario, Consumers Packaging Inc. filed a partial wind up report in 1997 (the "1997 report").
2. Two Notices of Proposal were issued on May 14, 1999. One Notice of Proposal ordered Consumers Packaging Inc. to accept as members of the Plan certain replacement call-in employees. The other Notice of Proposal refused to approve the 1997 report on the grounds that the replacement call-in employees were not included in the report and that "grow-in" to plant closure benefits was not provided to unionized hourly employees affected by the partial wind up.
3. Consumers Packaging Inc. requested a hearing before the Financial Services Tribunal (the "Tribunal") with respect to both Notices of Proposal. The hearing concerning the replacement call-in employees was settled by the parties in December of 1999. Pursuant to the terms of the settlement, an Order was issued on January 10, 2000, requiring Consumers Packaging Inc. to accept as members of the Plan those replacement call-in employees who met certain conditions.
4. The hearing concerning the "grow-in" to plant closure benefits was discontinued in March of 2000, after Consumers Packaging Inc. withdrew its hearing request. An Order was subsequently issued requiring Consumers Packaging Inc. to file an amended partial wind up report by April 28, 2000. The Order required the amended partial wind up report to include the liabilities for the replacement call-in employees and the liabilities for the "grow-in" to plant closure benefits.
5. In 1997, Consumers Packaging Inc. also filed an application to register Amendment No. 2 to the Plan (the "1997 Amendment"), which provided enhanced bridge benefits to members who had at least 10 years of continuous service as well as 55 points in age and years





- of service. There was no age restriction in the 1997 Amendment. Neither Notice of Proposal concerned the 1997 Amendment.
6. On May 19, 2000, Consumers Packaging Inc. filed a revised partial wind up report (the "revised report") and a revised application to register Amendment No. (the "revised Amendment"). The revised Amendment placed a restriction on the enhanced bridge benefits; a member with 10 years of continuous service plus 55 points in age plus service was not eligible for these benefits if his or her pension was commencing prior to the age of 60. The revised report calculated the commuted values for members affected by the partial wind up based on the revised Amendment.
7. The 1997 Amendment was a valid amendment pursuant to section 13 and subsection 19(3)(b) of the *Act*. The revised Amendment is void pursuant to clause 14(1)(c) of the *Act*, in that it purports to reduce the amount or the commuted value of an ancillary benefit granted by the 1997 Amendment for which a member or former member has met all eligibility requirements under the Plan necessary to exercise the right to receive payment of the benefit.
8. The revised report does not meet the requirements of the *Act* pursuant to subsection 70(5) of the *Act* because the commuted value of the pension benefits and ancillary benefits for the affected members is calculated based on the revised Amendment, which is void under the *Act*. The revised report does not protect the interests of the members and former members of the Plan for the same reason.
9. Such further and other reasons as may come to my attention.
- YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal to Refuse is served<sup>1</sup> upon you, you deliver to the Tribunal a written notice that you require a hearing.
- Your written notice requiring a hearing shall be delivered to:
- Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
Toronto, ON  
M2N 6L9
- Attention:** The Registrar
- IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I WILL MAKE AN ORDER REFUSING TO APPROVE THE REVISED REPORT AND AN ORDER REFUSING TO REGISTER THE REVISED AMENDMENT.**
- DATED at Toronto, Ontario, this 20th day of April, 2001.
- Dina Palozzi  
Superintendent of Financial Services

NOTE - PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.



## Orders That Pension Plans be Wound Up – Section 69 of the PBA

**IN THE MATTER** OF the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended;

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the Pension Benefits Act, R.S.O. 1990, c. P.8, as amended, respecting the **Registered Pension Plan for Salaried (Non-Union) Employees of JPE Canada Inc., Registration No. 1038330;**

**TO: Clarica Life Insurance Company**

227 King Street South  
P.O. Box 1601  
Waterloo, ON  
N2J 4C5

Attention: Terri-Lynn Moser  
Finals Associate  
**Administrator**

**AND TO: JPE Canada Inc.**  
775 Technology Drive  
P.O. Box 660  
Peterborough, ON  
K9J 6Z8

Attention: D.L. Bacon  
Secretary  
**Employer**

### Order

**ON** the 26th day of March, 2001, I issued a **Notice of Proposal to make an Order** dated the 20th day of March, 2001, pursuant to subsection 69(1) of the Act, to the Administrator and to the Employer to wind up in whole the Registered Pension Plan for Salaried (Non-Union) Employees of JPE Canada Inc., Registration No. 1038330 (the "Plan") effective the 28th day of February, 1999.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal, (the "Tribunal"), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the Act.

**IT IS THEREFORE HEREBY ORDERED** that the **Registered Pension Plan for Salaried (Non-Union) Employees of JPE Canada Inc., Registration No. 1038330** be wound up in whole effective the 28th day of February, 1999, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act (Canada)*, R.S. 1985, c.B-3, as amended.
3. A significant number of members of the Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.

**PURSUANT TO** subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

### **Grant Thornton Limited**

Royal Bank Plaza  
200 Bay Street, 19th Floor  
P.O. Box 55  
Toronto, ON  
M5J 2P9  
Attention: Allan Rutman

**Interim Receiver and Trustee in Bankruptcy for JPE Canada Inc.**



DATED at Toronto, Ontario this 6th day of  
June, 2001.

K. David Gordon  
Director, Pension Plans Branch  
by Delegated Authority from  
Dina Palozzi  
Superintendent of Financial Services



**IN THE MATTER OF** the Pension Benefits Act  
R.S.O. 1990, c. P.8, as amended (the "*Act*");

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Act*,  
respecting **the Revised Employees' Pension  
Plan of the Employer, Registration  
No. 389114;**

**TO:** **Canada Life Assurance  
Company**  
330 University Avenue  
Toronto, ON  
M5G 1R8

Attention: Milica Stojšin  
Plan Wind-up Specialist  
**Administrator of the Revised  
Employees' Pension Plan of  
the Employer**

**AND TO:** **Listowel Transport Lines  
Limited**  
P.O. Box 390  
Gore Bay, ON  
POP 1H0

**AND TO:** **Canada-Jet Transportation, a  
division of Canada Transport  
Group Limited**  
200 Jamieson Bone Road  
P.O. Box 1450  
Belleville, ON  
K8N 5J7  
**Employer**

**Plan of the Employer, Registration No.  
389114** (the "*Plan*"), effective the 28th day of  
March, 1992.

**NO** Notice requiring a hearing was delivered to  
the Financial Services Tribunal, (the  
"*Tribunal*"), by the Administrator and/or the  
Employer within the time prescribed by  
subsection 89(6) of the *Act*.

**IT IS THEREFORE HEREBY ORDERED**  
that **the Revised Employees' Pension Plan  
of the Employer, Registration No. 389114**  
be wound up in whole effective the 28th day of  
March, 1992, for the following reason:

There was a cessation or suspension of employer  
contributions to the pension fund.

DATED at Toronto, Ontario this 26th day of  
March, 2001.

K. David Gordon  
Director, Pension Plans Branch  
by Delegated Authority from  
Dina Palozzi  
Superintendent of Financial Services  
21773

### Order

**ON** the 16th day of January, 2001, I issued a  
**Notice of Proposal to make an Order**  
dated the 9th day of January, 2001, pursuant to  
subsection 69(1) of the *Act*, to the  
Administrator and to the Employer to wind up  
in whole **the Revised Employees' Pension**





**IN THE MATTER OF** the Pension Benefits Act  
R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the Act,  
respecting **the Employees' Pension Plan  
for Employees of Listowel Transport  
Line Limited & J.E. Transport Limited,  
Registration No. 566232;**

**TO: Canada Life Assurance  
Company**

330 University Avenue  
Toronto, ON  
M5G 1R8

Attention: Milica Stojšin  
Plan Wind-up Specialist  
**Administrator of the  
Employees' Pension Plan for  
Employees of Listowel  
Transport Line Limited & J.E.  
Transport Limited**

**AND TO: Listowel Transport Lines  
Limited**

P.O. Box 390  
Gore Bay, ON  
P0P 1H0

**AND TO: Canada-Jet Transportation,  
a division of Canada  
Transport Group Limited**  
200 Jamieson Bone Road  
P.O. Box 1450  
Belleville, ON  
K8N 5J7  
**Employer**

### Order

**ON** the 16th day of January, 2001, I issued a  
**Notice of Proposal to make an Order**  
dated the 9th day of January, 2001, pursuant to  
subsection 69(1) of the Act, to the  
Administrator and to the Employer to wind up  
in whole **the Employees' Pension Plan for  
Employees of Listowel Transport Line  
Limited & J.E. Transport Limited,  
Registration No. 566232** (the "Plan")  
effective the 28th day of March, 1992.

**NO** Notice requiring a hearing was delivered to  
the Financial Services Tribunal, (the "Tribunal"),  
by the Administrator and/or the Employer  
within the time prescribed by subsection 89(6)  
of the Act.

**IT IS THEREFORE HEREBY ORDERED**  
that **the Employees' Pension Plan for  
Employees of Listowel Transport Line  
Limited & J.E. Transport Limited,  
Registration No. 566232** be wound up in  
whole effective the 28th day of March, 1992,  
for the following reason:

There was a cessation or suspension of employer  
contributions to the pension fund.

DATED at Toronto, Ontario this 21st day of  
March, 2001.

K. David Gordon  
Director, Pension Plans Branch  
by Delegated Authority from  
Dina Palozzi  
Superintendent of Financial Services  
21774

**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, c. P.8, as amended;

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order pursuant to section 69 of the *Pension  
Benefits Act*, R.S.O. 1990, c. P.8, as amended,  
respecting the **Pension Plan for Employees  
of JPE Canada Inc. who are Members of  
C.A.W. Locals 1524 and 1987 (formerly  
known as the Pension Plan for  
Employees of Pebra Inc. who are  
members of C.A.W. Locals 1524 and  
1987), Registration No. 694570;**

**TO:** **PricewaterhouseCoopers  
Limited**  
Suite 1100  
One Robert Speck Parkway  
Mississauga, ON  
L4Z 3M3

Attention: Lois Reyes  
Senior Counsel  
**Administrator**

**AND TO:** **JPE Canada Inc.**  
775 Technology Drive  
P.O. Box 660  
Peterborough, ON  
K9J 6Z8

Attention: Robert Tock  
Controller  
**Employer**

### **Order**

**ON** the 6th day of March, 2001, I issued a  
**Notice of Proposal to make an Order**  
dated the 2nd day of March, 2001, pursuant to  
subsection 69(1) of the *Act*, to the  
Administrator and to the Employer to wind up  
in whole the **Pension Plan for Employees  
of JPE Canada Inc. who are Members of**

**C.A.W. Locals 1524 and 1987 (formerly  
known as the Pension Plan for  
Employees of Pebra Inc. who are  
members of C.A.W. Locals 1524 and  
1987), Registration No. 694570** (the "Plan")  
effective the 9th day of February, 1999.

**NO** Notice requiring a hearing was delivered to  
the Financial Services Tribunal, (the "Tribunal"),  
by the Administrator and/or the Employer  
within the time prescribed by subsection 89(6)  
of the *Act*.

**IT IS THEREFORE HEREBY ORDERED**  
that the **Pension Plan for Employees of  
JPE Canada Inc. who are Members of  
C.A.W. Locals 1524 and 1987 (formerly  
known as the Pension Plan for  
Employees of Pebra Inc. who are  
members of C.A.W. Locals 1524 and  
1987), Registration No. 694570** be wound  
up in whole effective the 9th day of February,  
1999, for the following reasons:

1. There was a cessation or suspension of  
employer contributions to the pension fund.
2. The employer is bankrupt within the mean-  
ing of the *Bankruptcy and Insolvency Act*  
(Canada), R.S. 1985, c.B-3, as amended.
3. A significant number of members of the Plan  
ceased to be employed by the employer as a  
result of the discontinuance of all or part of  
the business of the employer or as a result  
of the reorganization of the business of the  
employer.

**PURSUANT TO** subsection 69(2) of the *Act*,  
the Administrator is required to give notice of  
this Order to the following persons by trans-  
mitting a copy hereof:



**C.A.W. Local 1524**

600 Wabanaki Drive  
Kitchener, ON  
N2C 2K4  
Attention: David Bailey  
President

**Union**

**C.A.W. Local 1987**

654 Rogers Street  
Peterborough, ON  
K9H 1Y2  
Attention: Ms. Rose Forrestall  
President

**Union**

**C.A.W. Canada**

205 Placer Court  
North York, ON  
M2H 3H9  
Attention: Tom Murphy  
National Representative

**Union**

**Grant Thornton Limited**

Royal Bank Plaza  
19th Floor, South Tower  
200 Bay Street  
Box 55  
Toronto, ON  
M5J 2P9

Attention: Andrea Orr

**Interim Receiver and Trustee in  
Bankruptcy for JPE Canada Inc.**

DATED at Toronto, Ontario this 4th day of  
June, 2001:

K. David Gordon  
Director, Pension Plans Branch  
by Delegated Authority from  
Dina Palozzi  
Superintendent of Financial Services



## Consents to Payments of surplus out of Wound Up Pension Plans

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **AM International Inc. Pension Plan (1979), Registration No. 0202044;**

**TO:** **PricewaterhouseCoopers Inc.**  
c/o Ayesworth Thompson Phelan  
O'Brien LLP  
P.O. Box 15 Suite 3000  
Royal Bank Plaza, South Tower  
Toronto, ON  
M5J 2J1

Attention: Peter R. Welsh  
**Applicant**

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the AM International Inc. Pension Plan (1979), Registration No. 0202044 of \$1,506,541 as at August 31, 2000 plus interest earnings to the date of payment to PricewaterhouseCoopers Inc.

DATED at Toronto, Ontario, this 11th day of May, 2001.

K. David Gordon  
Director  
Pension plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services  
cc: Marcel Theroux, William M. Mercer  
Limited  
cc: Susan Rowland, Andrew Hatnay,  
Koskie Minsky

### Consent

**ON** or about March 9, 2001 the Superintendent of Financial Services caused to be served on PricewaterhouseCoopers Inc. a Notice of Proposal dated March 8, 2001 to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the AM International Inc. Pension Plan (1979), Registration No. 0202044 (the "Plan") to PricewaterhouseCoopers Inc., in the amount of \$1,506,541 as at August 31, 2000 plus interest earnings to the date of payment.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Retirement Plan for the Employees of Gas Technology Canada, Registration No. 1040336**;

**TO:**           **Gas Technology Canada**  
243 Consumers Road, Suite 1200  
North York, ON  
M2J 5E2

Attention: Dr. Inge Hansson  
President

**Applicant and Employer**

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Retirement Plan for the Employees of Gas Technology Canada, Registration No. 1040336 of approximately \$6,300 as at August 21, 1998 plus investment earnings thereon to the date of payment, to Gas Technology Canada.

DATED at Toronto, Ontario, this 23rd day of April, 2001.

K. David Gordon  
Director  
Pension plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services  
c.c. Mr. Robert R. Coyle, The Standard Life  
Assurance Company

### Consent

**ON** or about March 20, 2001 the Superintendent of Financial Services caused to be served on Gas Technology Canada a Notice of Proposal dated March 19, 2001, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Retirement Plan for the Employees of Gas Technology Canada, Registration No. 1040336 (the "*Plan*"), to Gas Technology Canada, in the amount of approximately \$6,300 as at August 21, 1998 plus investment earnings thereon to the date of payment.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(4) of the *Act* consenting to a payment out of the **Dibrell Brothers of Canada Pension Plan for Local 341-T Employees, Registration No. C-18014;**

**TO:** **DIMON Incorporated**  
512 Bridge Street  
Danville, Virginia  
24543-0681  
U.S.A.

Attention: John O. Hunnicutt III  
Vice President, Administration  
**Applicant and Employer**

### Consent

**ON** or about May 23, 2001 the Superintendent of Financial Services caused to be served on DIMON Incorporated a Notice of Proposal dated May 17, 2001 to consent, pursuant to subsection 78(4) of the *Act*, to payment out of the Dibrell Brothers of Canada Pension Plan for Local 341-T Employees, Registration No. C-18014 (the "*Plan*"), to DIMON Incorporated in the amount of \$42,000 plus interest at the fund rate of return since the dates of payment of the Plan's wind up expenses.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Dibrell Brothers of Canada Pension Plan for Local 341-T Employees, Registration No. C-18014, of \$42,000 plus interest at the fund rate of return since the dates of payment of the Plan's wind up expenses, to DIMON Incorporated.

DATED at Toronto, Ontario, this 26th day of June, 2001.

K. David Gordon  
Director  
Pension plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services  
c.c. Priscilla Healy, Towers Perrin



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario *Act*, 1997, S.O. 1997, c. 28 (the "*Act*");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(4) of the *Act* consenting to a payment out of the **Dibrell Brothers of Canada Pension Plan for Non-Union Employees, Registration No. C-18015**;

**TO:** **DIMON Incorporated**  
512 Bridge Street  
Danville, Virginia  
24543-0681  
U.S.A.

Attention: John O. Hunnicutt III  
Vice President, Administration  
**Applicant and Employer**

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Dibrell Brothers of Canada Pension Plan for Non-Union Employees, Registration No. C-18015 of \$51,000 plus interest at the fund rate of return since the dates of payment of the Plan's wind up expenses to DIMON Incorporated.

DATED at Toronto, Ontario, this 26th day of June, 2001.

K. David Gordon  
Director  
Pension plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services  
c.c. Priscilla Healy, Towers Perrin

### Consent

**ON** or about May 23, 2001, the Superintendent of Financial Services caused to be served on DIMON Incorporated a Notice of Proposal dated May 17, 2001, to consent, pursuant to subsection 78(4) of the *Act*, to payment out of the Dibrell Brothers of Canada Pension Plan for Non-Union Employees, Registration No. C-18015 (the "*Plan*"), to DIMON Incorporated, in the amount of \$51,000 plus interest at the fund rate of return since the dates of payment of the Plan's wind up expenses.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "*Act*");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Retirement Plan for Employees of D.C. Heath Canada Ltd., Registration No. 0356444;**

**TO:** **D.C. Heath Canada, Ltd.**  
c/o Houghton Mifflin Company  
222 Berkeley Street  
Boston, MA  
U.S.A.  
02116-3764

Attention: Elizabeth L. Hacking  
President

**Applicant and Employer**

### Consent

**ON** or about January 15, 2001, the Superintendent of Financial Services caused to be served on Ms. Elizabeth L. Hacking a Notice of Proposal dated January 9, 2001, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Retirement Plan for Employees of D.C. Heath Canada, Ltd., Registration No. 0356444 (the "*Plan*"), to D.C. Heath Canada, Ltd. in the amount equal to 25% of the net surplus on the date of final distribution of the Plan assets; that is, the amount of surplus remaining in the Plan fund after taking into account the investment earnings realized on, and the expenses paid from, the fund since the effective date of Wind-up. As at May 31, 1996, total surplus equalled \$595,449.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant

or any other party within the time prescribed by subsection 89(6) of the *Act*.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Retirement Plan for Employees of D.C. Heath Canada, Ltd., Registration No. 0356444, of 25% of the net surplus on the date of final distribution of the Plan assets to D.C. Heath Canada, Ltd.; that is, the amount of surplus remaining in the Plan fund after taking into account the investment earnings realized on, and the expenses paid from, the fund since the effective date of Wind-up. As at May 31, 1996, total surplus equalled \$595,449.

### **THIS CONSENT IS EFFECTIVE ONLY**

**AFTER** the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements, pursuant to the Surplus Distribution Agreement) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at Toronto, Ontario, this 16th day of March, 2000.

K. David Gordon  
Director  
Pension plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services  
c.c. James Carter, William M. Mercer Limited





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Kamana Holdings Inc. Executive Pension Plan, Registration No. 407601;**

**TO:** **Kamana Holdings Inc.**  
30 Margaret Street  
St. Thomas, ON  
N5R 3H7

Attention: Mrs. Barbara Louis Ferriman  
**Applicant**

payment to Kamana Holdings Inc.  
DATED at Toronto, Ontario, this 3rd day of May, 2001.

K. David Gordon  
Director  
Pension plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services  
c.c. Mr. W.K. Simon, William M. Mercer  
Limited

### Consent

**ON** or about March 28, 2001, the Superintendent of Financial Services caused to be served on Kamana Holdings Inc. a Notice of Proposal dated March 27, 2001, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Kamana Holdings Inc. Executive Pension Plan, Registration No. 407601, to Kamana Holdings Inc. in the amount of \$150,000 as at December 1, 1999, plus investment earnings thereon to the date of payment.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Kamana Holdings Inc. Executive Pension Plan, Registration No. 407601, of \$150,000 as at December 1, 1999, plus investment earnings thereon to the date of

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Pension Plan for Employees of Frank Mauro Construction Limited, Registration No. 409474;**

**TO:** **Frank Mauro Construction Limited**  
c/o Mr. Don Jackett  
McColl Turner and Company  
362 Queen Street  
Peterborough, ON  
K9H 3J6

Attention: Mr. Frank Mauro  
**Applicant**

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Pension Plan for Employees of Frank Mauro Construction Limited, Registration No. 409474, of \$28,400 as at December 31, 1998, plus investment earnings thereon to the date of payment to Frank Mauro Construction Limited.

DATED at Toronto, Ontario, this 3rd day of May, 2001.

K. David Gordon

Director

Pension plans Branch

by delegated authority from

Dina Palozzi

Superintendent of Financial Services

c.c. Ms. Donna Wolfe, Cowan Wright Limited

### Consent

**ON** or about March 26, 2001, the Superintendent of Financial Services caused to be served on Frank Mauro Construction Limited a Notice of Proposal dated March 26, 2001, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Pension Plan for Employees of Frank Mauro Construction Limited, Registration No. 409474 to Frank Mauro Construction Limited, in the amount of \$28,400 as at December 31, 1998, plus investment earnings thereon to the date of payment.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Retirement Plan for the Employees of Furnas Electric Company, Registration No. 532234**;

**TO:** **Siemens Canada Limited**  
Applicant  
c/o Ms. Farida Samji  
William M. Mercer Limited  
BCE Place  
161 Bay Street, P.O. Box 501  
Toronto, ON  
M5J 2S5

### Consent

**ON** or about April 17, 2001, the Superintendent of Financial Services caused to be served on Siemens Canada Limited a Notice of Proposal dated April 11, 2001, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Retirement Plan for the Employees of Furnas Electric Company, Registration No. 532234, to Siemens Canada Limited in the amount equal to 50% of the net surplus, after taking into account the investment earnings realized and expenses incurred to the date of surplus payment. The plan had a surplus of \$218,822 as at September 30, 1996, the effective date of the wind up.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Retirement Plan for the Employees of Furnas Electric Company, Registration No. 532234, to Siemens Canada Limited in the amount equal to 50% of the net surplus, after taking into account the investment earnings realized and expenses incurred to the date of surplus payment. The plan had a surplus of \$218,822 as at September 30, 1996, the effective date of the wind up.

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies me that all benefits and other payments, including any enhancements arising from the surplus sharing agreement, to which members, former members and any other persons are entitled on the termination of the pension plan have been paid or provided for by the administrator of the pension plan.

DATED at Toronto, Ontario, this 13th day of June, 2001.

K. David Gordon  
Director  
Pension plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services  
c.c. Mr. John Mole, Siemens Canada Limited



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Retirement Plan for Rene Malette of Malette Inc., Registration No. 967752;**

**TO: Malette Inc.**  
C.P./P.O. Box 1100  
Timmins, ON  
P4N 7H9

Attention: Mr. Fern E. Boileau  
Group Pension Administrator  
**Applicant and Employer**

plus investment income and net of fees and expenses to Malette Inc.

DATED at Toronto, Ontario, this 1st day of March, 2001.

K. David Gordon  
Director  
Pension plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services  
c.c. Farida Samji, William M. Mercer Limited

### **Consent**

**ON** or about November 23, 2000, the Superintendent of Financial Services caused to be served on Malette Inc. a Notice of Proposal dated November 20, 2000, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Retirement Plan for Rene Malette of Malette Inc., Registration No. 967752 (the "Plan"), to Malette Inc. in the amount of \$74,715 as at May 31, 1999, plus investment income and net of fees and expenses.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Retirement Plan for Rene Malette of Malette Inc., Registration No. 967752, of \$74,715 as at May 31, 1999,





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(4) of the *Act* consenting to a payment out of the **Pension Plan for Unionized Employees of Flexia Corporation at Brantford, Registration No. 980037**;

**TO: Flexia Corporation**  
369 Elgin Street  
Brantford, ON  
N3S 7P5

Attention: Mr. Duncan Fletcher  
Chief Financial  
**Applicant**

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the The Pension Plan for Unionized Employees of Flexia Corporation, Registration No. 980037, to Flexia Corporation, in the amount of \$130,115.31 as at December 27, 2000, plus investment earnings thereon to the date of payment.

DATED at Toronto, Ontario, this 29th day of June, 2001.

K. David Gordon  
Director  
Pension plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services  
c.c. Mr. Chris T. Tomev, F.S.A., Avalon Actuarial  
Consulting Inc.

### **Consent**

**ON** or about May 22, 2001, the Superintendent of Financial Services caused to be served on Flexia Corporation a Notice of Proposal dated May 17, 2001, to consent, pursuant to subsection 78(4) of the *Act*, to payment out of The Pension Plan for Unionized Employees of Flexia Corporation, Registration No. 980037, to Flexia Corporation, in the amount of \$130,115.31 as at December 27, 2000, plus investment earnings thereon to the date of payment.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Pension Plan for Non-Union Salaried Employees of MAN Roland Canada Inc., Registration No. 988808;**

**TO:** **MAN Roland Canada Inc.**  
800 East Oak Hill Drive  
Westmont IL 60559  
U.S.A.

Attention: Barbara Pala  
**Director, Human Resources**

DATED at Toronto, Ontario, this 19th day of March, 2001.

K. David Gordon  
Director  
Pension plans Branch  
by delegated authority from  
Dina Palozzi  
Superintendent of Financial Services  
c.c. Nathalie Cardinal, Hewitt Associates

### **Consent**

**ON** or about December 28, 2000, the Superintendent of Financial Services caused to be served on MAN Roland Canada Inc., a Notice of Proposal dated December 21, 2000 to consent, pursuant to subsection 78(4) of the *Act*, to payment out of the Pension Plan for Non-Union Salaried Employees of MAN Roland Canada Inc., Registration No.988808, to MAN Roland Canada Inc. in the amount of \$32,000.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Pension Plan for Non-Union Salaried Employees of MAN Roland Canada Inc., Registration No. 988808, of \$32,000 to MAN Roland Canada Inc.



## **Declaration That the Pension Benefits Guarantee Fund Applies To Pension Plans – Subsection 83(1) of the PBA**

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 respecting the **Forest City International Trucks Ltd. Non-Contributory Retirement Plan (for Salaried Non-Manual Non-Unionized Employees), Registration No. 597948;**

**TO: Ernst & Young Inc.**  
222 Bay Street  
P. O. Box 251  
Toronto-Dominion Centre  
Toronto, ON  
M5K 1J7

Attention: Felix Hsu  
Manager  
**Administrator of the Forest City International Trucks Ltd. Non-Contributory Retirement Plan (for Salaried Non-Manual Non-Unionized Employees)**

**AND TO: Forest City International Trucks Ltd.**  
3003 Page Street  
London, ON  
N5V 4J1

Attention: John Parliament  
Controller  
**Employer**

### **Declaration**

#### **WHEREAS:**

1. The Forest City International Trucks Ltd. Non-Contributory Retirement Plan (for Salaried Non-Manual Non-Unionized Employees), Registration No. 597948 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act") and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "PBGF") by the *Act* or the regulations made thereunder; and
3. The Pension Plan was wound up effective May 25, 1991; and
4. The Superintendent of Pensions appointed Ernst & Young Inc. as the administrator (the "Administrator") of the Pension Plan on February 5th, 1992.
5. On March 26, 2001, I signed and issued a Notice of Proposal to make a Declaration that the PBGF applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the *Act*, has been received.



**NOW THEREFORE TAKE NOTICE** I declare pursuant to sections 83 and 89 of the *Act*, that the PBGF applies to the Pension Plan for the following reasons:

1. The Wind Up Report and the Application for a Declaration and an Allocation against the PBGF, filed by the Administrator indicate an estimated funding deficiency of \$76,408.00 as at May 25, 1991, and an estimated claim against the Guarantee Fund as at September 30, 2000, of \$192,728.00.
2. On May 25, 1991, Forest City International Trucks Ltd. was assigned into bankruptcy.
3. The trustee in bankruptcy of Forest City International Trucks Ltd. had advised the Administrator that there were no assets available for the Pension Plan. The trustee was discharged in October, 1993.

DATED at Toronto, Ontario, this 23rd day of May, 2001.

K. David Gordon  
Director, Pension Plans Branch  
by delegated authority from  
Dina Palozzi  
Chief Executive Officer and  
Superintendent of Financial Services





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the Pension Plan for **Unionized Employees of Northern Globe Materials, Inc. (Brantford Division), (the "Pension Plan")**, Registration No. 680421;

**TO:** **Arthur Andersen Inc.**  
4 King Street West  
Suite 1050  
Toronto, ON  
M5H 1B6

Attention: Lawrence A. Contant  
**Administrator of the Pension Plan for Unionized Employees of Northern Globe Materials, Inc. (Brantford Division)**

**AND TO:** **Globe Building Materials Inc.**  
2230 Indianapolis Blvd.  
Whiting IN 46394

Attention: John E. Dombrow  
Director, Human Resources  
**Employer**

**AND TO:** **United Steelworkers of America**  
District 6  
1031 Barton Street East  
Hamilton, ON  
L8L 3E3

Attention: Bryan Adamczyk  
**Collective Bargaining Agents**

**AND TO:** **A. Farber & Partners Inc.**  
1200 Sheppard Avenue East  
Suite 300  
North York, ON  
M2K 2R8

Attention: Allan Nackan  
**Trustee in Bankruptcy for Northern Globe Building Materials, Inc.**

### Declaration

#### **WHEREAS:**

1. The Pension Plan for Unionized Employees of Northern Globe Materials, Inc., (Brantford Division), Registration No. 680421 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act, 1997* S.O. 1997, c. 28 (the "Act") and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "PBGF") by the *Act* or the regulations made thereunder; and
3. The Pension Plan was wound up effective November 16, 1995; and
4. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Pension Plan on May 29, 1996; and
5. On January 26, 2001, I issued a Notice of Proposal dated January 25, 2001, to make a Declaration that the PBGF applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89(6) of the *Act*, has been received.

**NOW THEREFORE TAKE NOTICE** I declare, pursuant to section 83 of the *Act*, that the PBGF applies to the Pension Plan for the following reasons:

1. The Wind Up Report filed by the Administrator indicates an estimated funding deficiency of \$103,353.20 as at November 16, 1995.
2. On November 16, 1995, Northern Globe Materials Inc., was assigned into bankruptcy.
3. The trustee in bankruptcy of Northern Globe Materials Inc., has advised the Administrator that there are no assets available for the Pension Plan.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and Regulation cannot be satisfied.

DATED at Toronto, Ontario, this 9th day of April, 2001.

K. David Gordon  
Director, Pension Plans Branch  
By Delegated Authority from  
Dina Palozzi  
Chief Executive Officer and  
Superintendent of Financial Services



## **Allocations of Money From the Pension Benefits Guarantee Fund – Subsection 34 (7) of Regulation 909**

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Pension Plan for Salaried Employees of Frink Environmental Inc. and Hamilton Gear Inc. (the “Pension Plan”), Registration No. 337691;**

**TO:** **PricewaterhouseCoopers Inc.**  
Suite 1100  
One Robert Speck Parkway  
Mississauga, ON  
L4Z 3M3

Attention: Paul Macphail  
**Administrator of the Pension Plan for Salaried Employees of Frink Environmental Inc. and Hamilton Gear Inc.**

**NOW THEREFORE**, I shall allocate from the PBGF and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the *Act* (the “Regulation”), an amount not to exceed \$1,014,769.00, to provide together with the Ontario assets, for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the PBGF but not required to provide such benefits shall be returned to the PBGF.

DATED at Toronto, Ontario, this 26th day of February, 2001.

Dina Palozzi  
Chief Executive Officer and  
Superintendent of Financial Services

### **Allocation**

**WHEREAS** on the 18th day of January, 2001, I declared, pursuant to sections 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the “*Act*”), that the Pension Benefits Guarantee Fund (the “PBGF”) applies to the Pension Plan for Salaried Employees of Frink Environmental Inc. and Hamilton Gear Inc., Registration No. C-337691 (the “Pension Plan”);



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Declaration by the Superintendent of Financial Services under Section 83 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Pension Plan for Employees of Income Trust Company, Registration No. 0560235;**

TO: **Arthur Andersen Inc.**  
4 King Street West  
Suite 1050  
Toronto, ON  
M5H 1B6

Attention: Mr. David Kearney  
**Administrator of the Pension Plan for Employees of Income Trust Company, Registration No. 0560235.**

### **Revised Allocation**

**WHEREAS** on the 19th day of July, 2000, I declared, pursuant to sections 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act*, 1997, S. O. 1997, c. 28 (the "*Act*"), that the Pension Benefits Guarantee Fund (the "*Guarantee Fund*") applies to the Pension Plan for Employees of Income Trust Company, Registration No. 0560235 (the "*Pension Plan*"); and

**WHEREAS** on the 19th day of July, 2000, I allocated from the Guarantee Fund for payment to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the *Act* (the "*Regulation*"), an amount not to

exceed \$460,900.00 to provide, together with the Ontario assets for the benefits determined in accordance with section 34 of the *Regulation*; and

**WHEREAS**, the administrator of the plan has found it necessary to revise the amount of the allocation requested from the said \$460,900.00 to an amount of \$589,200.00, determined as at February 28, 2001;

**NOW THEREFORE**, I shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the *Act* (the "*Regulation*"), a revised amount not to exceed \$589,200.00 to provide, together with the Ontario assets for the benefits determined in accordance with section 34 of the *Regulation*. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 3rd day of May, 2001.

Dina Palozzi  
Chief Executive Officer  
and Superintendent of Financial Services



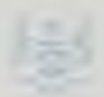


## TRIBUNAL ACTIVITIES

### Appointments of Financial Services Tribunal Board Members

Name and O.C.	Effective Appointment Date	Expiry Date
<b>Milczynski, Martha</b> (Chair)		
O.C. 1622/2001	June 20, 2001	June 19, 2004
O.C. 1665/99	October 6, 1999	July 7, 2001
O.C. 1808/98	July 8, 1998	October 6, 1999
<b>McNairn, Colin</b> (Vice-Chair)		
O.C. 1623/2001	June 20, 2001	June 19, 2004**
O.C. 1809/98	July 8, 1998	July 7, 2001
<b>Bush, Kathryn M.</b> (Vice-Chair)		
O.C. 1052/2000	May 31, 2000	May 30, 2002**
O.C. 1666/99	October 6, 1999	June 16, 2000
O.C. 1191/99	June 17, 1999	October 6, 1999
O.C. 904/97	May 14, 1997	June 16, 1999
<b>Corbett, Anne</b>		
O.C. 1438/2001	June 19, 2004**	June 20, 2001
<b>Erlichman, Louis</b>		
O.C. 2527/98	December 9, 1998	December 8, 2001
O.C. 1592/98	June 17, 1998	December 16, 1998
<b>Forbes, William M.</b>		
O.C. 1624/2001	June 20, 2001	June 19, 2002**
O.C. 520/98	March 25, 1998	March 24, 2001
<b>Gavin, Heather</b>		
O.C. 11/99	January 13, 1999	January 12, 2002
<b>Greville, M. Elizabeth</b>		
O.C. 222/99	January 27, 1999	January 26, 2002
O.C. 2405/95	February 8, 1996	February 7, 1999
<b>Martin, Joseph P.</b>		
O.C. 1626/2001	June 20, 2001	June 19, 2004**
O.C. 1810/98	July 8, 1998	July 7, 2001
<b>Moore, C.S. (Kit)</b>		
O.C. 1625/2001	June 20, 2001	June 19, 2004**
O.C. 1591/98	July 1, 1998	June 30, 2001
<b>Stephenson, Joyce Anne</b>		
O.C. 2409/98	November 4, 1998	November 3, 2001
O.C. 1930/95	October 28, 1995	October 27, 1998
<b>Wires, David E.</b>		
O.C. 2166/99	February 26, 2000	February 25, 2003
O.C. 257/97	February 27, 1997	February 26, 2000

\*\*Or on the day FSCO/OSC merges, if earlier



## Pension Hearings Before the Financial Services Tribunal

### **Brewers Retail Pension Plan for Bargaining Unit Employees, Registration No. 336081, FST File No. P0099-2000;**

On February 24, 2000, Mr. Patrick J. Moore, President of the United Brewers' Warehousing Workers, Local 375W, requested a hearing seeking an Order directing "the Superintendent to order the administrator of the Plan (Brewers Retail Inc.) to cease administering the Plan with an improperly constituted advisory committee and to cause the creation of a properly constituted advisory committee pursuant to the *Act* and formulating documents." The hearing request arose as a result of a letter from the Superintendent dated January 26, 2000, in which the Superintendent stated that there were no grounds under the *Pension Benefits Act* and Plan to order the establishment of an advisory committee. The letter also stated that any issue that Mr. Moore may have with the letter of understanding, which is part of the agreement between Brewers Retail Inc. and United Food and Commercial Workers Provincial Board (the "UBWW/UFCW"), wherein Brewers Retail Inc. acknowledges that the UBWW/UFCW has a right to appoint a pension committee with membership, roles and responsibilities as set out in the *Pension Benefits Act*, would be a labour issue and not within the Superintendent's jurisdiction.

At a pre-hearing conference held on May 17, 2000, Brewers Retail Inc. and the UBWW/UFCW were granted full party status. At the pre-hearing conference the parties agreed that before the Financial Services Tribunal considered the matter on its merits, it was necessary for it to determine the

preliminary issue of whether it had jurisdiction to grant the relief sought in Mr. Moore's Request for Hearing. At the pre-hearing conference, the Superintendent raised the issue of whether notice to former members of the Plan ought to be provided as it appeared that former members of the Plan were not represented.

In a telephone conference held on November 16, 2000, the hearing on the notice issue was scheduled for March 7, 2001. The hearing on the jurisdictional issue was scheduled for September 28, 2001.

On March 7, 2001, the Tribunal decided that former members had received adequate notice of the proceeding through the existing parties to the proceeding. The written reasons for Decision dated April 10, 2001, are published in this Bulletin at page 125.

### **London Life Insurance Company Staff Pension Plan, Registration No. 0343368, FST File No. P0100-2000;**

On March 6, 2000, London Life Insurance Company requested a hearing with respect to the Superintendent's Notice of Proposal dated February 17, 2000, proposing to order that the Plan be wound up in part in relation to those members and former members of the Plan who were employed by London Life and who ceased to be employed effective between January 1, 1996 and December 31, 1996, as a result of (i) the reorganization of the business of London Life, or (ii) the discontinuance of all or a significant portion of the business carried on by London Life at one or more specific locations.

At the pre-hearing conference held on July 11, 2000, the Executive Members of the London Life Members' Committee were granted full

party status. Upon a request made by London Life that all information produced by it in response to interrogatories and to a request for disclosure of documents from other parties be kept confidential, the Tribunal issued an Order dated July 25, 2000, which was published in Volume 10, Issue 1 of the Pension Bulletin.

The Executive Members of the London Life Members' Committee brought a motion before the Tribunal on August 29, 2000, requesting an order directing London Life to disclose certain information to them and to the Superintendent. The Tribunal's Order on the motion and the Reasons for Order, both dated September 18, 2000, were published in Volume 10, Issue 1 of the Pension Bulletin.

The hearing was held on December 11 – 15 and December 19 – 20, 2000. Reasons for Decision dated February 7, 2001, were released and are published in Volume 10, Issue 1 of the Pension Bulletin.

The Superintendent and the Executive Members filed a Request for Review, asking the panel to deal with the issues that had not been addressed in the Reasons for Decision. On April 18, 2001, the panel issued its Disposition of Request for Review, which is published in this Pension Bulletin at page 129, declining to review its Reasons for Decision.

An application for an order of costs against London Life was made by the Executive Members. That application was dismissed by the panel. Its Decision on Request for Costs dated June 6, 2001, is published in this Pension Bulletin on page 132.

### **Ontario Public Service Pension Plan, Registration No. 208777, FST File No. P0116-2000;**

On August 2, 2000, the Ontario Pension Board

filed a request for hearing in respect of the Superintendent's Notice of Proposal dated July 12, 2000, ordering the Ontario Pension Board to pay Mr. Victor Burns his full pension benefits, with interest payable pursuant to subsection 24(11) of Regulation 909 made under the *Pension Benefits Act*, retroactive to the date of Mr. Burns' retirement from the Ontario Provincial Police ("OPP"), within 60 days from the date of the Order, and on an ongoing basis. An Application for party status was filed by Victor Burns on November 9, 2000, and full party status was granted by the Financial Services Tribunal at a pre-hearing conference held on November 23, 2000.

The hearing is scheduled for October 15 and 16, 2001.

### **David Horgan (Ontario Public Service Pension Plan, Registration No. 208777), FST File No. P0120-2000;**

On August 11, 2000, David Horgan requested a hearing regarding the Superintendent's Notice of Proposal dated July 12, 2000, proposing to refuse to make an order under section 87 of the *Pension Benefits Act*, with respect to Mr. Horgan's claim that he is entitled to receive pension benefits from the Plan.

The Ontario Pension Board filed an Application for party status on September 19, 2000, and was granted full party status at the pre-hearing conference held on November 23, 2000. The hearing was held July 11, 2001.

### **Rupinder Anand and OPSEU Pension Trust:**

On February 6, 2001, Rupinder Anand requested that a hearing regarding the Superintendent's Notice of Proposal dated January 4, 2001, proposing to refuse to make an order under section 87 of the *Pension*



*Benefits Act*, with respect to Mr. Anand's claim that he is eligible to receive pension benefits from the Ontario Public Service Pension Plan. The OPSEU Pension Trust ("OPT") filed an application for party status on February 14, 2001. Counsel for Mr. Anand (who is also counsel for Mr. Horgan) requested that the hearing in this matter be joined with the hearing in Horgan, as the issues in both cases were virtually identical. None of the other parties objected to the joinder. An order granting OPT party status and joining the hearings, in the Horgan and Anand matters, to be heard concurrently, was signed by the Financial Services Tribunal on March 7, 2001.

The hearing was held July 11, 2001.

**Imperial Oil Ltd., FST File No. P0130-2000;**

On October 31, 2000, Imperial Oil Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated October 3, 2000, proposing to refuse to approve a partial wind up report in respect of two Plans of which Imperial Oil is the Administrator.

The stated reasons for the proposed refusal include the failure of each wind up report to do the following: (a) reflect the liabilities associated with all of the members of the Plan whose employment was terminated by Imperial Oil during the wind-up period; (b) apply the growth provisions of section 74 of the *Pension Benefits Act* in a proper manner; (c) provide benefits in accordance with elections made, as required under subsection 72(1) of the *Pension Benefits Act*, among various options including those available as a result of partial wind up; and (d) provide for the distribution of assets related to the partial wind up group.

A pre-hearing conference was held on June 19, 2001. At the pre-hearing conference, the Superintendent agreed to amend the Notice of Proposal in this matter to delete reference to (d) above.

A date for hearing and preliminary motion with respect to answers to interrogatories has been scheduled for July 25, 2001.

**Marshall-Barwick (formerly Marshall Steel Limited), Registration No. 0968081, FST File No. P150-2001;**

On January 16, 2001, Marshall-Barwick Inc. (formerly Marshall Steel Limited) requested a hearing in respect of the Superintendent's Notice of Proposal dated December 12, 2000. The Superintendent is proposing to Refuse to Approve a Partial Wind Up Report as at August 28, 1992, respecting the Retirement Plan for Salaried Employees of Marshall Steel Limited and Associated Companies in relation to employees who ceased to be employed by Marshall Steel Limited as a result of the closure of its plant in Milton, Ontario. The Superintendent's basis for the Notice of Proposal is that the Report does not protect the interests of all those affected by the partial wind-up, specifically, Mr. Jeffrey G. Marshall, an employee who was terminated during the wind-up period. On June 4, 2001, Jeffrey G. Marshall applied for party status.

A pre-hearing conference is scheduled for August 13, 2001.

**National Steel Car Limited, Registration Nos. 0215020 and 0215038, FST File No. P154-2001;**

On March 7, 2001, representatives for members of the Pension Plan for Salaried Employees of National Steel Car Limited requested a hearing regarding the Superintendent's consent to the

transfer of all of the assets of the Pension Plan for Salaried Employees of National Steel Car Limited to the Pension Plan for Hourly-Paid Employees of National Steel Car Limited. The Salaried Plan is in a surplus position and the Hourly-Paid Plan has an unfunded liability.

Applications for party status were filed on behalf of National Steel Car Limited and certain representatives of the United Steel Workers of America, Local 7135, on behalf of the members of the Hourly-Paid Plan. The two applicants for party status were joined as parties by order at the pre-hearing conference held on June 21, 2001. The main issues in this case are whether the Tribunal has the jurisdiction to entertain the applicant's request for a hearing and whether the Superintendent's consent to the transfer of assets should be set aside or varied. A Settlement Conference is scheduled for September 24, 2001.

**Independent Order of Foresters Fieldworkers, Registration No. 0354399, FST File No. P155-2001;**

On August 12, 2001, the Independent Order of Foresters requested a hearing with respect to the Superintendent's Notice of Proposal dated March 19, 2001, to Refuse to Consent to an application for the payment of the surplus of the IOF Fieldworkers Pension Plan to the employer. The Superintendent proposed to refuse consent on the basis that she was not satisfied that the Plan had a surplus and that the Plan provides for the payment of any surplus to the employer on the wind up of the Plan.

A pre-hearing conference was held on July 4, 2001. A settlement conference is scheduled for November 13, 2001.

**Cooper Industries (Canada) Inc., Registration No. 0240622, FST File No. P156-2001;**

On April 17, 2001, Cooper Industries (Canada) Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated March 8, 2001, to Refuse to Approve a Partial Wind Up Report, prepared in November 1999, in relation to the partial wind up of the Retirement Plan for Salaried Employees of Cooper Canada – Plan A, Registration No. 240622, as at March 30, 1992, in relation to employees at the Port Hope location of Cooper Industries (Canada) Inc. and to make an Order requiring Cooper Industries (Canada) Inc. to refrain from using and to preserve for distribution that portion of the surplus of the Plan attributable to the Port Hope location. The basis for the Notice of Proposal was that the Partial Wind-Up Report proposed that the surplus assets of the Plan attributable to the Port Hope location be retained for continuing application toward future current service contributions for the Plan's continuing membership and, therefore, failed to provide for distribution of the Port Hope surplus assets.

On May 14, 2001, Messrs. Ray Mills and Larry Battersby applied for party status on behalf of plan members and former plan members employed at the Port Hope plant and beneficiaries of same.

A pre-hearing conference is scheduled for September 5, 2001.

**Pension Plan for the Employees of Dymet Limited, Registration No. 0242735, FST File No. P0157-2001;**

On April 18, 2001, Dymet Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated March 19, 2001, to make an order that the Pension Plan for the



Employees of Dyment Limited, Registration No. 0242735, be wound up in full effective August 23, 1996, and to refuse to approve the actuarial report prepared in April 1997, in relation to the partial wind up of the Plan as at August 23, 1996.

The basis for the Notice of Proposal was that as of August 23, 1996, there were no remaining active members in the Plan and Dyment was no longer required to make contributions. The basis for refusing to approve the actuarial report is that the report does not meet the requirements of the *Pension Benefits Act* and the Regulations and does not protect the interests of the members or former members of the Plan.

On May 22, 2001, Mr. Mobeen Khaja applied for party status. Mr. Khaja was part of a group of employees who were subject to the partial wind up of the Plan, and would be affected by a full wind up of the Plan.

A pre-hearing conference is scheduled for July 13, 2001.

**Camco Inc. Pension Plan No. 4 & Pension Plan No. 7, FST File No. P160-2001;**

On May 14, 2001, Camco Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated March 30, 2001, to Refuse to Consent to a Transfer of Assets from the Camco Inc. Pension Plan No. 4, Registration No. 0583302 to the Camco Inc. Pension Plan No. 7, Registration No. 0583336.

The basis for the Notice of Proposal was that the asset transfer does not protect the pension benefits and other benefits of the former members of Plan No. 4 under subsection 81 (5) of the *Pension Benefits Act*.

A pre-hearing conference is scheduled for September 24, 2001.

**Consumers Packaging Inc., Registration No. 0998682, FST File No. P162-2001;**

On May 17, 2001, Consumers Packaging Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated April 20, 2001, to Refuse to Approve a Partial Wind-Up Report filed by Consumers Packaging Inc. on May 19, 2000 with respect to a partial wind up of the Consumers Packaging Inc. Pension Plan II, Registration No. 0998682, as at May 7, 1997, and to Refuse to Register an amendment to such Pension Plan filed by Consumers Packaging Inc. on May 19, 2000, titled Amendment No. 2.

The basis for the Notice of Proposal was that Consumers Packaging Inc. filed a partial wind up report in 1997. The Superintendent issued two Notices of Proposal in 1999 ordering Consumers Packaging Inc. to accept as members of the Plan certain replacement call-in employees and refusing to approve the 1997 partial wind up report on the grounds that the replacement call-in employees were not included in the report and that "grow-in" to plant closure benefits was not provided to unionized hourly employees affected by the partial wind up. Consumers Packaging Inc. requested a hearing before the Financial Services Tribunal with respect to both Notices of Proposal. The hearing concerning the call-in employees was settled by the parties and Consumers Packaging Inc. accepted as members of the Plan those replacement call-in employees who met certain conditions. The hearing request regarding the "grow-in" benefits was withdrawn. Consumers Packaging Inc. was ordered to file an amended partial wind up report. In addition, in 1997, Consumers Packaging filed an application to register



Amendment No. 2 to the Plan which provided enhanced bridge benefits to some members. On May 19, 2000, Consumers Packaging filed a revised partial wind up report (the "revised report") and a revised application to register Amendment #2 (the "revised Amendment"). The Superintendent issued the April 20, 2001 Notice of Proposal on the basis that the revised Amendment is void pursuant to subsection 19(3)(b) of the *Pension Benefits Act* and that the revised report does not meet the requirements of the *Pension Benefits Act* pursuant to subsection 70(5) because the commuted value of the pension benefits and ancillary benefits for the affected members is calculated based on the revised Amendment, which is void under the *Act* and does not protect the interests of the members and former members of the Plan for the same reason.

The Superior Court of Justice, Commercial List issued an Order, dated May 23, 2001, stating that any suit, action, enforcement process, extra-judicial proceeding, regulatory, administrative or other proceeding against or in respect of Consumers Packaging Inc. already commenced be stayed and suspended until and including June 22, 2001. A further Order was issued on June 18, 2001, extending the stay period until August 15, 2001.

**Goodyear Canada Inc., Registration No. 0337766, FST File No. P163-2001;**

On May 22, 2001, Goodyear Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated April 24, 2001, to make an Order that the Goodyear Contributory Pension Plan, Registration No. 0337766, be wound up in relation to those members and former members of the Plan who ceased to be employed by Goodyear Canada Inc. between December 1, 1995 and

January 10, 1998, at certain Ontario locations on the basis that all, or a significant portion of the business carried on at each such location was discontinued, or sold to a person who did not provide a pension plan for the former members of the Plan who became employees of that person as a result of the discontinuance of all, or a significant portion of the business carried on by Goodyear at a number of specified locations. The hearing request was withdrawn on July 12, 2001.

**CBS Canada Co., Registration Nos. 348409 & 526632, FST File No. P164-2001;**

On June 8, 2001, CBS Canada Co. requested a hearing regarding the Superintendent's Notices of Proposal dated May 9 and 15, 2001, to Refuse to Approve a Partial Wind-Up Report in respect of the businesses carried on by CBS Canada Co. (formerly Westinghouse) at its Burlington, Ontario; London, Ontario; St. Jean, Quebec; Hamilton, Ontario and Motors Division plants.

The basis for the Notices of Proposal was that the Partial Wind-up Report failed to provide employer-request early retirement benefits and bridge benefits, contemplated by the Plan, to all members of the partial wind-up groups whose age plus years of service equalled at least 55 and because the Report failed to provide for the distribution of any surplus assets relating to particular wind-up groups.





## Financial Hardship

Application to the Superintendent of Financial Services for Consent to Withdraw Money from a Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund based on Financial Hardship.

The following Requests for Hearing have been received.

FST File No.	Superintendent of Financial Services' Notice of Proposal:	Comments
U0149-2001	To Refuse to Consent, dated February 7, 2001	Reasons for Decision dated March 28, 2001, are published in this bulletin on page 135
U0152-2001	To Refuse to Consent, dated February 16, 2001	Reasons for Decision dated May 10, 2001, are published in this bulletin on page 136
U0153-2001	To Refuse to Consent, dated February 15, 2001	Reasons for Decision dated May 10, 2001, are published in this bulletin on page 138
U0158-2001	To Refuse to Consent, dated March 27, 2001	Applicant deceased prior to completion of process.
U0161-2001	To Refuse to Consent, dated April 20, 2001	Hearing (telephone conference) held on June 14, 2001. Reasons for Decision dated June 18, 2001, are published in this bulletin on page 140

## Financial Services Tribunal Decisions with Reasons

INDEX NO.: FST File No. P0099-2000

PLAN: Brewers Retail Pension Plan for Bargaining Unit Employees,  
Registration 0336081

DATE OF DECISION: April 10, 2001

PUBLISHED: Bulletin 10/2 and FSCO website

*(Note: Only FST decisions pertaining to pensions are included in the section)*

*Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the Pension Benefits Act,  
R.S.O. 1990, c. p.8, as amended (the "Act");

**AND IN THE MATTER OF** a refusal by the  
Superintendent of Financial Services (the "  
"Superintendent") to make an order in  
response to a complaint regarding the **Brewers  
Retail Pension Plan for Bargaining  
Employees, Registration No. 0336081**  
(the "Plan");

**AND IN THE MATTER OF** a Hearing in  
accordance with subsection 89(8) of the Act;

**BETWEEN: UNITED FOOD AND  
COMMERCIAL WORKERS  
UNION LOCAL 375W**  
represented by  
**MR. PATRICK J. MOORE**  
**Applicant**  
-and-  
**SUPERINTENDENT OF  
FINANCIAL SERVICES** (the  
"Superintendent"), **BREWERS  
RETAIL INC.**, and  
**UNITED FOOD AND  
COMMERCIAL WORKERS**

**INTERNATIONAL  
UNION/UNITED BREWERS'  
WAREHOUSING WORKERS'  
PROVINCIAL BOARD** (the  
"Union")  
**Respondents**

### BEFORE:

Ms. Elizabeth Greville,  
Chair of the Panel and Member of the Tribunal  
Ms. Heather Gavin, Member of the Tribunal  
Mr. Kit Moore, Member of the Tribunal

### APPEARANCES:

For the Applicant:	Mr. Thane Woodside Mr. Patrick Moore Mr. Jim Smith
For the Superintendent:	Ms. Shemin Manji Ms. Deborah McPhail
For the Union:	Mr. John Evans Mr. John Montgomery
For Brewers Retail Inc.:	Mr. Dirk Van de Kamer

### HEARING DATE:

March 7, 2001  
Toronto, Ontario

### REASONS FOR DECISION

#### The Background

On February 24, 2000, the Applicant, now  
identified as United Food and Commercial

Workers Local 375W represented by Mr. Patrick J. Moore, requested a hearing before the Tribunal, under section 89 of the *Act*. This request arose as a result of the Superintendent's refusal to make an order requested by the Applicant regarding the constitution of the Plan's advisory committee, as provided for in the *Act*.

At a pre-hearing conference held May 17, 2000, it was agreed that the Tribunal would hear a pre-hearing motion regarding its jurisdiction to hear this matter. In a second pre-hearing held by telephone conference on November 16, 2000, it was agreed that the Tribunal would first rule on the need for separate notice of the jurisdictional hearing to be sent to former members of the Plan. Following written submissions, the parties argued the notice issue at the hearing held March 7, 2001.

### The Notice Issue

The Tribunal's Rules governing its proceedings include a requirement that the Tribunal provide written notice of hearings. Rule 22.02 of the Tribunal's *Interim Rules of Practice and Procedure for Proceedings Before the Financial Services Tribunal* (the "Interim Rules") reads as follows:

"The Tribunal shall provide written Notice of the Hearing to the parties and others as required by law, and as the Tribunal considers necessary."

The issue to be decided at this hearing is whether separate notice of the hearing on the Tribunal's jurisdiction needs to be provided to former members of the Plan.

### The Facts

1. At the pre-hearing conference, the Superintendent raised the issue of notice to former members, based on the

Superintendent's understanding that the Union represented only active members of the Plan. This issue was not resolved during the pre-hearing conferences.

2. Following the pre-hearing conferences, the Tribunal received a letter dated January 26, 2001, from the Union, including the following statements:

Our client confirms that in the present proceeding it acts on behalf of and represents all active and non-active [members] (deferred vested and retirees/pensioners).

Our client confirms that in addition to any statutory obligation, the Union acknowledges that it has a fiduciary duty to represent all members and beneficiaries of the pension plan.

3. The Tribunal received a letter dated February 7, 2001 from the Applicant, confirming receipt of the Union's letter dated January 26, 2001, and stating the Applicant's agreement that the Union "has a fiduciary duty to represent the interests of all members and beneficiaries of the pension plan including deferred vested and retired members". In its letter, the Applicant also stated its position that the acknowledgement by the Union "that it has fiduciary duties vis-à-vis the deferred vested and retirees/pensioners does not obviate the need to ensure that adequate notice of the jurisdictional hearing is provided to the members of these groups".

4. The Tribunal also received a letter dated February 19, 2001 from the Superintendent acknowledging that the Union "is now stating that it represents all active and non-active or former members of the Plan in this proceeding". This letter included a statement by the Superintendent agreeing "that no additional notice to former or non-active members is warranted in the circumstances".



## The Arguments

The Applicant argued that:

- (a) the Tribunal is responsible for ensuring that adequate notice is provided to any person who may have an interest in the Tribunal's proceedings;
- (b) the Tribunal must satisfy itself that notice has been served properly, in its manner, its scope, and its content;
- (c) differences between active and former members, and their differing relationship to the Union, lead to inherent conflicts of interest between these two groups of members, as recognized by the Supreme Court in *Dayco (Canada) Ltd. vs National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada)* [1993] 2 S.C.R. 230 (the "Dayco Decision");
- (d) despite the Union's declaration that it has a fiduciary duty to represent the interests of all members and beneficiaries, it is not enough for the Tribunal to rely on the Union to represent the differing interests of active and former members; and
- (e) the only way to ensure that former members have been properly notified is for the Tribunal to order that proper notice be given to former members.

The Superintendent, who had originally raised the issue of notice to former members, argued that the Union's statement contained in its letter of January 26, 2001, that the Union represents all members of the Plan in this proceeding, meant separate notice to former members is not warranted in the circumstances of this case. In the Superintendent's view, the *Act* contemplates a trade union representing former members of a pension plan, and provides no mechanism for the Tribunal to look behind the Union's statement that it represents all

members of the Plan.

The Union stated its position that it represents all active and former members of the Plan, with the result that separate notice of the Tribunal's proceedings need not be provided to any member or group of members. The Union submitted that it has a fiduciary obligation to represent these former members, as supported by the Supreme Court's views expressed in the *Dayco* Decision, and that failure to consider the interests of these members might form the basis of a claim against the Union for a breach of that fiduciary duty. The Union also noted that it routinely represents former members, for example through collectively bargained improvements for retired members.

The Respondent employer, *Brewers' Retail Inc.*, supported the positions taken by the Union in this matter, noting that the employer has always understood that the Union represents all active and former members.

## The Decision

In reaching its decision, the Tribunal panel considered the parties' correspondence and submissions, in the light of its responsibility under Interim Rule 22.02 to provide notice "as the Tribunal considers necessary". Of particular significance was the Union's letter dated January 26, 2001, stating that the Union represents all members in this proceeding, and that the Union acknowledges its fiduciary duty to do so. The panel also noted that the employer, *Brewers' Retail Inc.*, has always understood the Union to be acting on behalf of all members.

Despite these statements by the Union and *Brewers' Retail Inc.*, the Applicant has argued that inherent conflicts of interest between active members and former members require separate notice of the Tribunal's proceedings to be given to former members. The panel has





considered this argument, but takes the view that any such conflicts of interest would be a matter for the Union to take into account in its representation of the Plan members. The panel agrees with the position of the Superintendent, that the *Act* contains no mechanism for the Tribunal to look behind the Union's statement that it represents all members of the Plan.

In this matter, the panel has determined that the Tribunal will consider adequate notice to have been served if notice is provided, in accordance with the *Act* and Regulation, to the existing parties in these proceedings – the Union, the Applicant, Brewers' Retail Inc., and the Superintendent. Given this decision, the panel found it unnecessary to decide the other issues argued in the hearing, such as costs and form of notice.

The panel declines to make any additional notice requirements for former members of the Plan, in the circumstances of this case.

DATED at Toronto, Ontario, this 10th day of April, 2001.

M. Elizabeth Greville  
Chair of the Panel

Heather Gavin  
Member of the Panel

Kit Moore  
Member of the Panel



INDEX NO.: FST File No. P0100-2000

PLAN: London Life Insurance Company Staff Pension Plan,  
Registration 0343368

DATE OF DECISION: April 18, 2001

PUBLISHED: Bulletin 10/2 and FSCO website

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**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the “*Act*”);

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an order under Section 69 of the *Act* respecting **London Life Insurance Company Staff Pension Plan, Registration No. 0343368** (the “*Plan*”);

**AND IN THE MATTER OF** a Hearing in Accordance with subsection 89(8) of the *Act*.

**BETWEEN: LONDON LIFE INSURANCE COMPANY Applicant**  
-and-  
**SUPERINTENDENT OF FINANCIAL SERVICES AND THE EXECUTIVE MEMBERS OF THE LONDON LIFE MEMBERS’ COMMITTEE, ALEX MURPHY, DON MATHEWSON AND BARBARA MCGEE Respondents**

## **REVISED DISPOSITION OF REQUEST FOR REVIEW**

In written reasons dated February 7, 2001, we rendered our final decision in this matter, directing the Superintendent of Financial Services to carry out a proposal, contained in a

Notice of Proposal dated February 17, 2000, to order that the London Life Staff Pension Plan be wound up in part. The order of the Superintendent, modified in accordance with our decision, would direct the wind up of the Plan, pursuant to clause 69(1)(d) of the *Act*, in relation to those members of the Plan who ceased to be employed by London Life in 1996, as a result of the reorganization of the business of London Life.

On February 19, 2001, the Respondents made a Request for Review of our decision pursuant to Part X of the Tribunal’s Interim Rules of Practice and Procedure. That Request asks for a review on the basis that our decision failed to address two issues, namely:

the extent to which employees who voluntarily left their employment at London Life during 1996 should be included or excluded from the partial wind up group affected by the partial wind up; and  
whether clause 69(1)(e) of the *Act* should be invoked to order a partial wind-up of the Plan on the basis of certain office closures and office amalgamations effected by London Life in 1995 and 1997.

London Life responded to the Request for Review on February 26, 2001. We have decided to deal with the Request on the basis of the representations in the Request and the response to the Request and on the basis of subsequent



supplementary representations, all of which were made in writing.

Neither of the two issues that the Respondents would like us to address had to be considered in our decision in order for us to dispose of London Life's challenge to the proposed partial wind up order of the Superintendent.

If the Superintendent is unable to agree with the position that London Life may ultimately take on the first issue – whether some or all of those who voluntarily terminated their employment with London Life should be included in the partial wind up group – she could propose to refuse to approve the partial wind up report reflecting the composition of that group, which London Life is obliged to file under the terms of the *Act*. London Life would then have the opportunity to make another request for a hearing by this Tribunal to challenge any such proposed refusal. In other words, there is an appropriate process, at a subsequent stage in the partial wind up, for resolving the first issue if it turns out to be a real issue in this case. Therefore, it would be premature for us to address the first issue, at this stage, through a review of our decision.

London Life agreed, in the course of the hearing preceding our decision, that the office closures that it carried out in 1995 and 1997 constituted a basis for a partial wind up order, under subsection 69(1)(e) of the *Act*, in relation to the affected employees. If London Life does not proceed to wind up the Plan in relation to those employees, the Superintendent could issue a notice of proposal to order such a wind up. London Life would then be entitled to make a further request for a hearing by this Tribunal in respect of that proposal. In other words, there is an appropriate process for resolving the second issue as it relates to office

closures if London Life should fail to proceed with a partial wind up in relation to the employees affected by those closures. Therefore, it would be premature for us to address the second issue in that respect, at this stage, through a review of our decision.

The issue of whether the office amalgamations that London Life carried out in 1995 and 1997 constituted a basis for a partial wind up order, under subsection 69(1)(e) of the *Act*, was not one of the original issues put before us in this case. However, both the office closures and the office amalgamations that took place in 1995 and 1997 were potentially relevant to one of the issues that was before us, namely:

If the Tribunal should decide to direct the Superintendent to order a partial wind up of the Plan, what are the appropriate commencement and end dates for the partial wind up order concerning the Plan.

Having decided to direct the Superintendent to order a partial wind up, we concluded that the appropriate commencement date and end date for the partial wind up that was the subject of the Superintendent's Notice of Proposal were January 1, 1996 and December 31, 1996 and that there was an insufficient connection between the events occurring outside that period, including the office closures and office amalgamations in 1995 and 1997, and the events occurring within that period, to justify extending the period backwards or forwards. Therefore, we did not need to deal with the question of whether the office closures and office amalgamations that took place in 1995 and 1997 would, of themselves, constitute the basis for a partial wind up order or orders. We believe that it would be unwise to address that question in the context of this case and in the absence of prior consideration of the question,



in a specific and discrete way, through the administrative processes of the office of the Superintendent.

For all of these reasons, we have decided not to review our decision in this matter.

DATED at Toronto, Ontario, this 18th day of April, 2001.

Colin H. H. McNairn,

Vice Chair of the Tribunal and of the Panel

Louis Erlichman,

Member of the Tribunal and Chair of the Panel

William M. Forbes,

Member of the Tribunal and of the Panel







INDEX NO.: FST File No. P0100-2000

PLAN: London Life Insurance Company Staff Pension Plan,  
Registration 0343368

DATE OF DECISION: June 6, 2001

PUBLISHED: Bulletin 10/2 and FSCO website

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**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the “Act”);

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under section 69 of the *Act* respecting the London Life Insurance Company Staff Pension Plan, Registration No. 0343368;

**AND IN THE MATTER OF** a Hearing in Accordance with subsection 89(8) of the *Act*.

**BETWEEN: LONDON LIFE INSURANCE COMPANY**

**Applicant**

-and-

**SUPERINTENDENT OF FINANCIAL SERVICES AND THE**

**EXECUTIVE COMMITTEE OF THE LONDON LIFE MEMBERS' COMMITTEE,**

**ALEX MURPHY,**

**DON MATHEWSON and**

**BARBARA MCGEE**

**Respondents**

## **DECISION ON REQUEST FOR COSTS**

In a decision dated February 7, 2001, the Tribunal directed the Superintendent to carry out the proposal, contained in her Notice of Proposal dated February 17, 2000, to partially wind up the London Life Insurance Company

Staff Pension Plan (the “Plan”) in relation to those members and former members of the Plan who ceased to be employed by the Employer effective between January 1, 1996 and December 31, 1996, as the result of the reorganization of the business of the employer. We made no order as to costs at that time, but invited the parties to make written representations on that matter.

The Executive Committee of the London Life Members' Committee (the “Members' Committee”) has asked for an award of costs against London Life, for its participation incurred in and related to the proceedings requested by London Life regarding partial wind-up of the Plan, including all legal costs and disbursements.

Sub-sections 24(1) and (3) of the *Financial Services Commission of Ontario Act*, 1997, give the Tribunal authority to order payment of the costs of a party to a proceeding by another party.

The Tribunal's Practice Direction on Cost Awards notes that costs will not be awarded as a matter of course, and lays out some criteria for a Tribunal's decision on the award of costs.

The Members' Committee raises two general arguments in support of the award of costs. First, London Life's failure to provide full and accurate information, initially to the Superintendent, and subsequently to the

Members' Committee, hampered the other parties to this proceeding and raised the cost of effective participation, particularly to the Members' Committee.

Second, the Members' Committee argued that London Life put forward a number of "frivolous, vexatious or unreasonable" positions, which prolonged and complicated proceedings, further increasing costs to the other parties.

To deal with the second of these arguments first, the Tribunal does not consider that the fact that a party puts forward arguments which are ultimately unsuccessful is of itself evidence that such arguments are unreasonable. While there can be situations in which a party raises irrelevant issues or puts forward unreasonable positions which are clearly designed to disrupt or prolong hearings, parties have to be given latitude to present arguments, adapt or drop arguments in the light of proceedings and evidence brought forward, without being automatically penalized if their arguments are unsuccessful.

In this case, while London Life's was ultimately unsuccessful in its challenge to the Superintendent's Notice of Proposal, we do not feel that the arguments put forward by London Life were clearly unreasonable or designed to unduly delay or prolong the process.

On the question of the provision of information by London Life, this is a very serious issue for the Tribunal. Typically, it is the plan sponsor or employer who has access to the relevant information on a pension plan, and if the sponsor or employer is not forthcoming with necessary information, it is difficult for the Superintendent or other parties to operate effectively.

Frankly, London Life was in this case slow to provide all of the relevant information, first to the Superintendent and then to the other party.

Even recognizing that London Life was undergoing a major corporate reorganization, and that London Life received initial mixed signals from the Superintendent on the declaration of a partial wind-up, London Life has a responsibility to provide information on its pension plan on a complete and timely basis.

The Members' Committee, supported by the Superintendent, argues that the Tribunal should censure London Life for this failure through the award of costs, as a form of exemplary punishment to encourage future compliance by other employers.

Most of the complaints with respect to London Life's failure to provide information relate to its inadequate responses to the Superintendent's requests for information before the Superintendent's Notice of Proposal and the beginning of the Tribunal process. If the Superintendent believes that London Life's misconduct merits a financial penalty, section 110 of the *Pension Benefits Act* lays down significant penalties for failure to comply in a timely manner with the Superintendent's requests for information under section 98 of the *Act*.

The Tribunal does not award costs as a matter of course. In fact, the Practice Direction suggests that the Tribunal will generally award costs only in exceptional circumstances, particularly involving misconduct on the part of a party, so that parties will not be inappropriately discouraged from appearing before the Tribunal by the threat of additional costs.

In this light, we are not persuaded that London Life's shortcomings in providing information created problems or increased costs for the Members' Committee on a scale to justify the award of costs. In addition, as noted earlier, we do not feel that the positions put forward by London Life were patently unreasonable.



We therefore deny the order for costs against London Life requested by the Members' Committee.

DATED at Toronto, Ontario, this 6th day of June, 2001.

Colin H. H. McNairn,  
Vice Chair of the Tribunal and  
Chair of the Panel

Louis Erlichman,  
Member of the Tribunal and the Panel

William M. Forbes,  
Member of the Tribunal and of the Panel



INDEX NO.: FST File No. U0149-2001

DATE OF DECISION: March 28, 2001

PUBLISHED: Bulletin 10/2 and FSCO website

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent (a "Notice") by the Superintendent of Financial Services (the "Superintendent") with respect to an application for withdrawal of money from a life income fund, a locked-in retirement account or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the *Act*.

## REASONS

1. The Applicant in this matter made an application to the Superintendent, on the basis of financial hardship, for access to funds associated with a locked-in account in her name.
2. The Superintendent proposed to refuse the application, by a Notice dated February 7, 2001, on the grounds that the circumstances of the Applicant, as disclosed by the application, are not circumstances of financial hardship as prescribed by subsection 87(1) of Ontario Regulation 909, as amended, adopted under the *Act*. This Tribunal agrees with the Superintendent that this is indeed the case.
3. The Tribunal does not have the authority to consent or to direct the Superintendent to consent to an application for a withdrawal from a locked-in account that does not meet the requirements for obtaining consent that are set out in the Regulation, including the

requirement that the circumstances of the Applicant fall within the prescribed circumstances of financial hardship. Therefore, although the evidence of financial hardship on the part of the Applicant is compelling, the application in this case cannot be granted because of the failure to meet those requirements. If the Applicant is able to establish, on the basis of additional evidence, that her circumstances do, in fact, meet those requirements she could, of course, make a further application for withdrawal to the Superintendent.

4. The Tribunal must, therefore, affirm the Superintendent's Notice dated February 7, 2001, in respect of the present application.

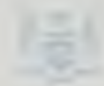
## ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice, dated February 7, 2001, directed to the Applicant.

DATED at Toronto, Ontario, this 28th day of March, 2001.

Colin H. H. McNairn  
Vice Chair  
Financial Services Tribunal





INDEX NO.: FST File No. U0152-2001

DATE OF DECISION: May 10, 2001

PUBLISHED: Bulletin 10/2 and FSCO website

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the “Act”);

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent (a “Notice”) by the Superintendent of Financial Services (the “Superintendent”) with respect to an application for withdrawal of money from a life income fund, a locked-in retirement account or a locked-in retirement income fund (a “locked-in account”) based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the *Act*.

## REASONS

1. The Applicant in this matter made an application to the Superintendent, on the basis of financial hardship, for access to funds associated with a locked-in account of which she was the owner. The particular ground of financial hardship on which the Applicant relied was that set out in paragraph 2 of subsection 87(1) of Regulation 909 (the “Regulation”), adopted pursuant to the *Act*, namely that her husband had received “a written demand in respect of a default on a debt that is secured against [her] principal residence and [she] could face eviction if the debt remains unpaid.” The written demand that was alleged to fit this description was contained in a letter dated January 16, 2001 from the Canada Customs and Revenue Agency (the “Agency”) to the Applicant’s husband giving “final notice” of an income tax debt of approximately \$33,000 that, if not paid or the subject of a notice of objection, would result in “legal collection action, such as garnishing your income and directing the sheriff to seize and sell your assets.” The Applicant maintained that, having regard to the income and assets of her spouse, the only way that the debt could be fully satisfied would be through the seizure and sale of their principal residence.
2. The Superintendent proposed to refuse the application, by a Notice dated February 15, 2001, on the grounds that the letter from the Agency did not indicate that the income tax debt was secured against the principal residence of the Applicant and that she could face eviction if the debt were to remain unpaid.
3. The Applicant made a Request for a Hearing by this Tribunal in respect of the Superintendent’s proposal set out in that Notice. In the meantime, the Agency agreed to hold off taking action to enforce the income tax debt pending the outcome of the Request for Hearing.
4. Under the *Income Tax Act* (Canada), an income tax debt is not secured, in specific terms, against any of the assets of the debtor. If the Minister of National Revenue certifies the debt as an unpaid amount under that *Act*, the debt becomes enforceable as a judgment debt if and when the certificate is registered with the Federal Court of Canada (s. 223(2) and (3) of that *Act*). The court document evidencing that registration may then be filed or recorded, in accordance with

the law of a province, for the purpose of creating a charge or lien on the debtor's property in the same way as a judgment debt may be filed or recorded for that purpose (s. 223(5) of that Act).

5. Given the Agency's option of causing these steps to be taken, so as to create a charge or lien on the principal residence of the Applicant, can the Agency's letter of January 16, 2001, be said to represent a demand in respect of a default on a debt secured against the Applicant's principal residence and can she be said to be subject to eviction if the debt remains unpaid? That is the question for this Tribunal. The Applicant's position is that this question should be answered in the affirmative and that the Applicant should not have to wait until a lien or charge is recorded against her personal residence before she can apply successfully for access to the funds in her locked-in account. By that time, she maintained, her credit rating and, therefore, the viability of the new business that she and her husband have started from their principal residence would be threatened.
6. I am of the view that the ground of financial hardship on which the Applicant relies in this case contemplates the *current* existence of security against an individual's principal residence and an *imminent* threat of eviction from such a residence. The income tax debt to which the January 16 letter from the Agency relates is not now secured against the Applicant's principal residence. The possibility, or even the probability, that at some stage it may be does not qualify it as a debt secured against that residence for the purposes of the Regulation.

7. Unfortunately for the Applicant, this Tribunal does not have the authority to relieve against the harshness resulting from the limited scope of the grounds of financial hardship, set out in the Regulation, by expanding those grounds or creating exceptions in appropriate cases.

8. I must, therefore, affirm the Superintendent's Notice dated February 15, 2001.

### ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice, dated February 15, 2001, directed to the Applicant.

DATED at Toronto, Ontario, this 10th day of May, 2001.

Colin H. H. McNair  
Vice Chair  
Financial Services Tribunal



INDEX NO.: FST File No. U0153-2001

DATE OF DECISION: May 10, 2001

PUBLISHED: Bulletin 10/2 and FSCO website

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent (a "*Notice*") by the Superintendent of Financial Services (the "*Superintendent*") with respect to an application for withdrawal of money from a life income fund, a locked-in retirement account or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the *Act*.

## REASONS

1. The Applicant in this matter made an application to the Superintendent, on the basis of financial hardship, for access to funds associated with a locked-in account of which he was the owner. The particular ground of financial hardship on which the Applicant relied was that set out in paragraph 2 of subsection 87(1) of Regulation 909 (the "*Regulation*"), adopted pursuant to the *Act*, namely that he had received "a written demand in respect of a default on a debt that is secured against his principal residence and he could face eviction if the debt remains unpaid." The written demand that was alleged to fit this description was contained in a letter dated January 16, 2001, from the Canada Customs and Revenue Agency (the "*Agency*") to the Applicant giving "final notice" of an income tax debt of approximately \$33,000 that, if not paid or the subject of a notice of objection, would result in "legal collection action, such as garnishing your income and directing the sheriff to seize and sell your assets." The Applicant maintained that, having regard to his income and assets, the only way that the debt could be fully satisfied would be through the seizure and sale of his principal residence.
2. The Superintendent proposed to refuse the application, by a Notice dated February 15, 2001, on the grounds that the letter from the Agency did not indicate that the income tax debt was secured against the principal residence of the Applicant and that he could face eviction if the debt were to remain unpaid.
3. The Applicant made a Request for a Hearing by this Tribunal in respect of the Superintendent's proposal set out in that Notice. In the meantime, the Agency agreed to hold off taking action to enforce the income tax debt pending the outcome of the Request for Hearing.
4. Under the *Income Tax Act* (Canada), an income tax debt is not secured, in specific terms, against any of the assets of the debtor. If the Minister of National Revenue certifies the debt as an unpaid amount under that *Act*, the debt becomes enforceable as a judgment debt if and when the certificate is registered with the Federal Court of Canada (s. 223(2) and (3) of that *Act*). The court document evidencing that registration may then be filed or recorded, in accordance with the

law of a province, for the purpose of creating a charge or lien on the debtor's property in the same way as a judgment debt may be filed or recorded for that purpose (s. 223(5) of that Act).

5. Given the Agency's option of causing these steps to be taken, so as to create a charge or lien on the principal residence of the Applicant, can the Agency's letter of January 16, 2001, be said to represent a demand in respect of a default on a debt secured against the Applicant's principal residence and can he be said to be subject to eviction if the debt remains unpaid? That is the question for this Tribunal. The Applicant's position is that this question should be answered in the affirmative and that the Applicant should not have to wait until a lien or charge is recorded against his personal residence before he can apply successfully for access to the funds in his locked-in account. By that time, he maintained, his credit rating and, therefore, the viability of the new business that he and his wife have started from their principal residence would be threatened.
6. I am of the view that the ground of financial hardship on which the Applicant relies in this case contemplates the *current* existence of security against an individual's principal residence and an *imminent* threat of eviction from such a residence. The income tax debt to which the January 16 letter from the Agency relates is not now secured against the Applicant's principal residence. The possibility, or even the probability, that at some stage it may be does not qualify it as a debt secured against that residence for the purposes of the Regulation.
7. Unfortunately for the Applicant, this Tribunal does not have the authority to

relieve against the harshness resulting from the limited scope of the grounds of financial hardship, set out in the Regulation, by expanding those grounds or creating exceptions in appropriate cases.

8. I must, therefore, affirm the Superintendent's Notice dated February 15, 2001.

### ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice, dated February 15, 2001, directed to the Applicant.

DATED at Toronto, Ontario, this 10th day of May, 2001.

Colin H. H. McNairn  
Vice Chair  
Financial Services Tribunal





INDEX NO.: FST File No. U0161-2001

DATE OF DECISION: June 18, 2001

PUBLISHED: Bulletin 10/2 and FSCO website

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

**AND IN THE MATTER OF** a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated April 20, 2001, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

**AND IN THE MATTER OF** a Hearing under subsection 89(8) of the *Act*;

## REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated April 20, 2001, that denied the Applicant access to funds held in a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the *Act*, which reads as follows:  

67.(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.
2. The Superintendent's ground for denial was that the maximum amount the Applicant

may withdraw, determined in accordance with subsections 89(6) and 88(2) of the Regulation, would be less than the minimum \$500 withdrawal that may be authorized by Superintendent, as specified under subsection 85(2)(a) of the Regulation.

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the application.
4. An application for withdrawal based on financial hardship is subject to conditions and requirements prescribed in sections 83 through 89 of the Regulation. Relevant sections include:

85.(2)(a) The application shall request that the consent authorize the withdrawal of the amount calculated under this Part, which shall not be less than \$500;

88(2) Subject to section 89, ... the owner is entitled to withdraw an amount calculated using the formula,  $A - (B - C) = D$  in which

"A" is the amount the owner applies to withdraw;

"B" is the market value of all assets of the owner ....

"C" is the total of the liabilities of the owner ....

"(B - C)" cannot be less than 0;

"D" is the amount the owner is entitled to withdraw, net of any withholding tax and fee.

89(6) The amount the owner may apply to withdraw under section 88 is the amount by which "E" exceeds "F" where,

"E" is 50 per cent of the Year's Maximum Pensionable Earnings (YMPE) for the year in which the application is signed; and

"F" is 75 per cent of the owner's expected total income from all sources before taxes for the 12-month period following the date of signing the application.

DATED at Toronto, Ontario, this 18th day of June, 2001.

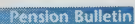
Mr. Louis Erlichman  
Member, Financial Services Tribunal

5. This application was signed in the year 2001, for which the Canada Pension Plan's YMPE was \$38,300. Fifty per cent of the YMPE is \$19,150. In the application dated March 21, 2001, the Applicant stated that his expected total income from all sources before taxes for the 12 months following the date of the application was \$25,085.16. 75 per cent of this amount is \$18,813.87. The amount that the Applicant can therefore apply to withdraw is  $\$19,150 - \$18,813.87 = \$336.13$ . The Applicant declared that he had no assets or liabilities of a category which is not excluded by the Regulation from these calculations. As a result, the Applicant is entitled to withdraw \$336.13, subject to other prescribed conditions in the legislation.
6. The calculated amount of \$336.13 does not meet the minimum amount of withdrawal to which the Superintendent may consent, as prescribed by subsection 85(2)(a), which requires that "the amount calculated under this Part ... shall not be less than \$500. Therefore, the application does not meet the requirements of subsection 67(5) of the *Act*.

## ORDER

The Superintendent's Notice of Proposal to Refuse to Consent, dated April 20, 2001, is affirmed and this application is dismissed.

## NOTES



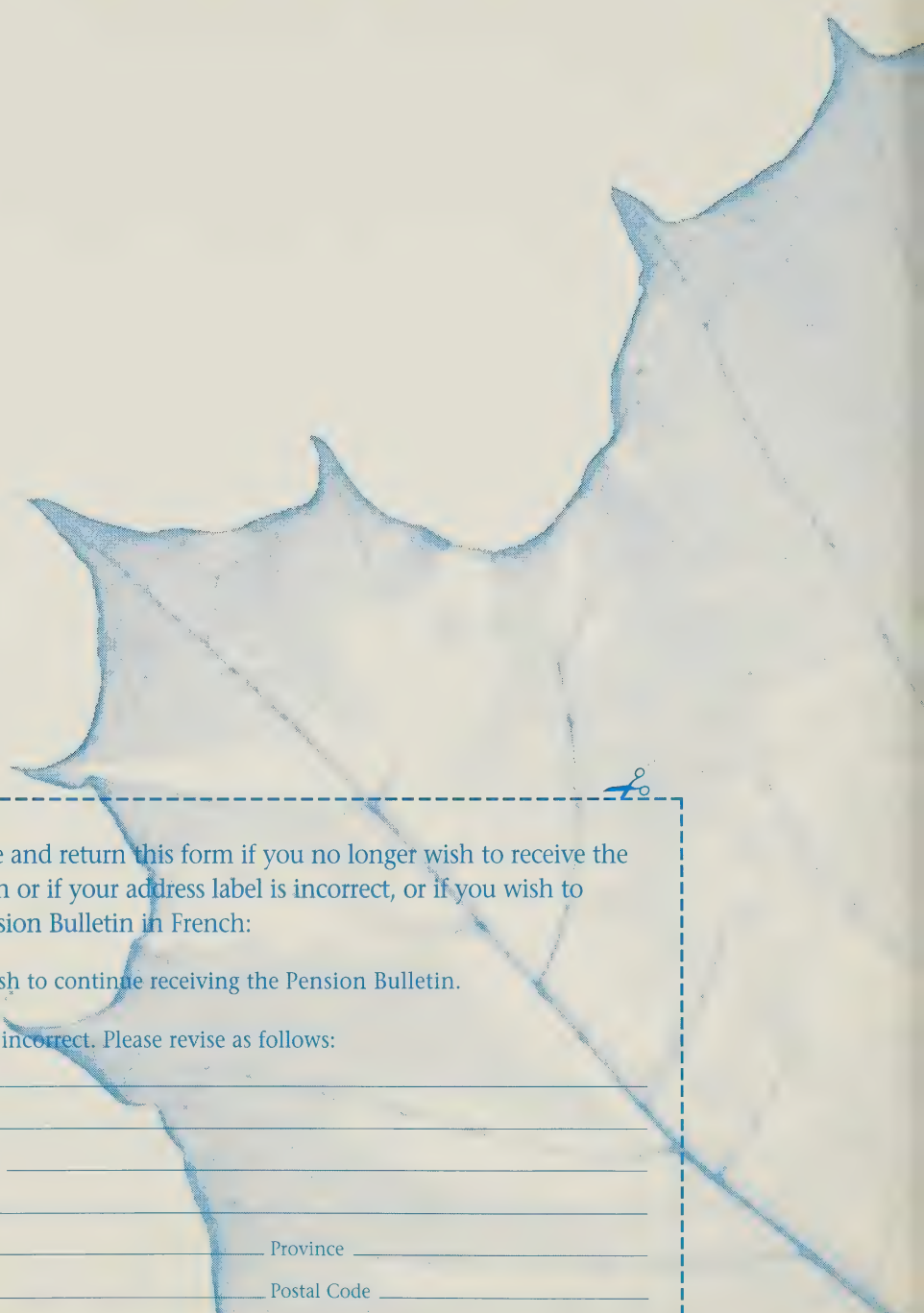


## NOTES



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